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UNITED NATIONS JURIDICAL YEARBOOK 1979

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FOREWORD

By its resolution 1814 (XVII) of 18 December 1962, the General Assembly requested the Secretary-General to publish a *Juridical Yearbook* which would include certain documentary materials of a legal character concerning the United Nations and related intergovernmental organizations, and by its resolution 3006 (XXVII) of 18 December 1972 the General Assembly made certain changes in the outline of the *Yearbook*.

Chapters I and II of the present volume — the seventeenth of the series — contain legislative texts and treaty provisions relating to the legal status of the United Nations and related intergovernmental organizations. With a few exceptions, the legislative texts and treaty provisions which are included in these two chapters entered into force in 1977. Decisions given in 1979 by international and national tribunals relating to the legal status of the various organizations are found in chapters VII and VIII.

Chapter III contains a general review of the legal activities of the United Nations and related intergovernmental organizations, each organization has prepared the section which relates to it.

Chapter IV is devoted to treaties concerning international law concluded under the auspices of the organizations concerned during the year in question, whether or not they entered into force in that year. This criterion has been used in order to reduce in some measure the difficulty created by the sometimes considerable time-lag between the conclusion of treaties and their publication in the United Nations *Treaty Series* following upon entry into force.

Finally, the bibliography, which is prepared, under the responsibility of the Office of Legal Affairs, by the Dag Hammarskjöld Library, lists works and articles of a legal character published in 1979 regardless of the period to which they refer. Some works and articles which were not included in the bibliographies of the *Juridical Yearbook* for previous years have also been listed.

All documents published in the *Juridical Yearbook* were supplied by the organizations concerned, with the exception of the legislative texts and judicial decisions in chapters I and VIII which, unless otherwise indicated, were communicated by Governments at the request of the Secretary-General.

ABBREVIATIONS

ACABQ	Advisory Committee on Administrative and Budgetary Questions
ACC	Advisory Committee on Co-ordination
ADB	African Development Bank
Bank, World Bank, IBRD	International Bank for Reconstruction and Development
CCOP	Committee for Co-ordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas
ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
ECLA	Economic Commission for Latin America
ECWA	Economic Commission for Western Asia
ESCAP	Economic and Social Commission for Asia and the Pacific
EURATOM	European Atomic Energy Committee
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
ICSC	International Civil Service Commission
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
ILO	International Labour Organisation
IMCO	Inter-Governmental Maritime Consultative Organization
IMF	International Monetary Fund
ITU	International Telecommunication Union
JIU	Joint Inspection Unit
OECD	Organization for Economic Co-operation and Development
OPANAL	Organization of the Treaty for the Prohibition of Nuclear Weapons in Latin America
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNDRC	United Nations Disaster Relief Co-ordinator
UNEF	United Nations Emergency Force
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNEP	United Nations Environment Programme
UNFPA	United Nations Fund for Population Activities
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNITAR	United Nations Institute for Training and Research
UNJSPF	United Nations Joint Staff Pension Fund
UPU	Universal Postal Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Tourism Organization

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter I

LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

1. Austria

(*a*) ORDINANCE OF THE FEDERAL GOVERNMENT OF 17 OCTOBER 1978 ON THE GRANTING OF PRIVILEGES AND IMMUNITIES TO PERMANENT OBSERVER MISSIONS TO INTERNATIONAL ORGANIZATIONS

On the basis of article 1, paragraphs (1) and (9), of the Federal Act of 14 December 1977, Bundesgesetzblatt No. 677, on the Granting of Privileges and Immunities to International Organizations, it is ordered, by agreement with the Main Committee of the National Council, that:

Article 1

(1) Permanent observer missions accredited, in accordance with the statutes and decisions of the organizations in question, to international organizations within the meaning of article 1, paragraph (7), item 1, of the Federal Act contained in Bundesgesetzblatt No. 677/1977 which have their headquarters in Austria shall enjoy privileges and immunities as provided for in this Ordinance.

(2) Additional privileges and immunities which are granted to permanent observer missions through international treaties binding on the Republic of Austria shall not be affected.

Article 2

The premises of permanent observer missions shall enjoy such protection as circumstances make necessary. Austrian executive authorities may enter them only with the consent of the head of the mission or of the Federal Minister for Foreign Affairs.

Article 3

The documents of permanent observer missions shall be inviolable wherever they are to be found.

Article 4

Permanent observer missions may communicate with their superior authorities for official purposes freely and without hindrance and in doing so may also make use of coded reports. The courier pouches of permanent observer missions may be opened and detained with the consent of the Federal Minister for Foreign Affairs if there are valid grounds for assuming that the consignment contains something other than the documents referred to in article 3.

Article 5

Permanent observer missions shall be permitted to import objects for the official use of the mission free of tax and customs duties and free from import prohibitions or restrictions.

Article 6

(1) Members of permanent observer missions and the members of their families living in the same household must observe Austrian laws and may not interfere in the internal affairs of the Republic of Austria.

(2) Members of permanent observer missions and the members of their families living in the same household must refrain from all oral and written statements, which might impair the relations of the Republic of Austria with another State.

Article 7

(1) Members of permanent observer missions who hold a rank comparable to that of diplomatic personnel of a diplomatic mission and are neither Austrian nationals nor permanent residents of Austria shall be exempt from Austrian penal jurisdiction with respect to oral and written statements made by them and actions carried out by them in the exercise of their official functions as observers and representatives of their superior authorities.

(2) Members of permanent observer missions other than those who are referred to in paragraph (1) shall be subject to Austrian jurisdiction without any restriction.

Article 8

Members of permanent observer missions who are referred to in article 7, paragraph (1), shall also enjoy the following privileges:

(1) Exemption from all forms of taxation of the salaries, wages and remuneration, which they receive from their superior authorities.

(2) The right to import the following articles for personal use, free of tax and customs duties and free from economic import prohibitions and restrictions:

(*a*) On first taking up their duties, articles for their household establishment and personal items, in one delivery or several separate deliveries, and, within six months thereafter, any necessary supplementary items;

(*b*) One motor-car every four years;

(*c*) Limited quantities of specific articles intended for personal use and consumption but not for disposal as gifts or by sale, to the extent to which the employees of the International Atomic Energy Agency enjoy the right to import such articles under section 38 (iii) of the Headquarters Agreement, Bundesgesetzblatt No. 82/1958; in so far as the international organization to which the mission is accredited permits the persons referred to in article 7, paragraph (1), to have access to the commissary set up by the organization, they shall enjoy this right as well.

(*b*) ORDINANCE OF THE FEDERAL GOVERNMENT OF 5 JUNE 1979 ON THE GRANTING OF PRIVILEGES AND IMMUNITIES TO THE PERMANENT OBSERVER MISSION OF THE COMMISSION OF THE EUROPEAN COMMUNITIES

On the basis of article 1, paragraphs (1) and (9), of the Federal Act of 14 December 1977, Bundesgesetzblatt No. 677, on the Granting of Privileges and Immunities to International Organizations, it is ordered, by agreement with the Main Committee of the National Council, that:

Article 1

The permanent observer mission of the Commission of the European Communities accredited, in accordance with the statutes and decisions of the organizations in question, to one or more international organizations within the meaning of article 1, paragraph (7), item 1, of the Federal Act contained in Bundesgesetzblatt No. 677/1977 which have their headquarters in Austria shall enjoy

the same privileges and immunities as the permanent representation of a State member of the international organization to which the observer mission is accredited.

Article 2

The members of the permanent observer mission within the meaning of article 1 shall enjoy the same privileges and immunities as members of comparable rank of the permanent representation of a State member of the international organization to which the observer mission is accredited.

2. Cape Verde

A DECREE-LAW NO. 84/79, WHICH BECAME EFFECTIVE ON 13 OCTOBER 1979, ESTABLISHED A NEW REGULATION ON THE MOTOR VEHICLE CIRCULATION TAX CONCERNING THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS ORGANIZATION AND SPECIALIZED AGENCIES

The third paragraph of this Decree-Law provides that the auto vehicles of the United Nations Organization, specialized agencies and other international organizations that contribute to the development of the country shall be exempt of the Motor Vehicle Circulation Tax.

3. Czechoslovakia

NOTICE OF THE FEDERAL MINISTRY OF FOREIGN TRADE OF 12 MAY 1979 PROHIBITING OR LIMITING THE EXPORTATION OF CERTAIN GOODS BY TOURISTS[1]

Article 4

The notice does not apply to:

. . .

(*b*) goods exported by personnel of foreign diplomatic missions and other organizations benefiting from immunities and privileges in the Czechoslovak Socialist Republic.

Article 6

The present notice enters into force on 1 June 1979.

[1] English translation provided by Czechoslovakia.

4. El Salvador

REGULATIONS FOR THE GRANTING OF TAX EXEMPTIONS TO DIPLOMATIC REPRESENTATIONS AND REPRESENTATIONS OF INTERNATIONAL ORGANIZATIONS

Under these regulations, tax exemptions shall be authorized on the basis of the strictest reciprocity, in the following manner:

1. Diplomatic representations and those of international organizations may purchase or bring into the country duty-free one (1) motor-car for the official use of the mission concerned.

The Ministry of Foreign Affairs, through the Office of Protocol, may, however, authorize the entry of such other motor vehicles as may be needed for the normal requirements of the missions, provided that they meet the technical specifications of the function for which they are intended.

2. Ambassadors shall be entitled to import:

(*a*) Two (2) motor-cars the titles to which they may transfer tax-free after two (2) years have elapsed since the date on which the relevant tax exemption was authorized.

Monthly entitlement:

(*b*) Three hundred (300) gallons of petrol;

(*c*) Four (4) cases of whisky, containing twelve (12) bottles each;

(*d*) Four (4) cases of liqueurs, containing twelve (12) bottles each;

(*e*) Four (4) cases of wine containing twelve (12) bottles each;

(*f*) Four (4) cases of champagne containing twelve (12) bottles each;

(*g*) Two thousand (2,000) cigarettes.

The above-mentioned whisky and liqueur entitlements may be increased in special cases.

3. The entitlement of other accredited mission officials, except for honorary officials, shall be as follows:

(*a*) One (1) motor-car, the title to which they may transfer tax-free on the same conditions as those required of ambassadors.

Monthly entitlement:

(*b*) One hundred and fifty (150) gallons of petrol;

(*c*) Two (2) cases of whisky containing twelve (12) bottles each;

(*d*) Two (2) cases of liqueurs containing twelve (12) bottles each;

(*e*) Two (2) cases of wine containing twelve (12) bottles each;

(*f*) Two (2) cases of champagne containing twelve (12) bottles each;

(*g*) One thousand five hundred (1,500) cigarettes.

4. Administrative staff of accredited missions who are not nationals of El Salvador, provided that the same privilege is granted in their country of origin to Salvadorians, shall, in accordance with the provisions of the Vienna Convention on Diplomatic Relations, be granted an entitlement equal to that which is granted in their own country to administrative staff of the missions of El Salvador.

5. Duly accredited heads of the offices of international organizations shall be granted an entitlement equal to that referred to in paragraph 2 above; officials of the said offices shall be granted the entitlement referred to in paragraph 3, provided that they are not nationals of El Salvador.

6. Every request for a tax exemption must be accompanied by the following:

(i) A request indicating that Salvadorian officials enjoy the same exemption in the applicant's country of origin;

(ii) Invoices of the goods imported, giving details of the article or articles purchased;

(iii) A tax exemption form signed by the head of mission, as the applicant, and by the person concerned or by the owner of the imported article.

7. If persons are transferred, the sale of imported vehicles may not be authorized until six (6) months after the date of the tax exemption authorization, provided that this same procedure is followed in the applicant's country of origin.

8. For the granting of the above-mentioned tax exemptions it is essential that the official making the application should be a permanent resident of the country.

9. The provisions contained in circular notes No. 3 of 8 January 1974 and No. 13 of 18 August 1977 are hereby abrogated.

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5. United States of America

DEPARTMENT OF STATE REGULATIONS ON LIABILITY INSURANCE[2]

PART 151. COMPULSORY LIABILITY INSURANCE FOR DIPLOMATIC MISSIONS AND PERSONNEL.

Section 151.1 Purpose.

This part establishes regulations required under section 8 of the Diplomatic Relations Act (Pub. L. 95-393; 22 U.S.C. 254e). These regulations require all missions, members of missions and their families, and those officials of the United Nations who are entitled to diplomatic immunity to have and maintain liability insurance against the risks of bodily injury, including death, and property damage, including loss of use, arising from the ownership, maintenance, or use in the United States of any motor vehicle, vessel, or aircraft.

Section 151.2 Definitions.

(*a*) "Act" means the Diplomatic Relations Act, Pub. L. 95-393 (22 U.S.C. 254a *et seq.*, 28 U.S.C. 1364).

(*b*) "Persons subject to the Act", as defined in Section 2 of the Act, means: (1) The head of a mission and members of the diplomatic staff, administrative and technical staff, and service staff of a mission, as such terms are defined in Article 1 of the Vienna Convention on Diplomatic Relations of April 18, 1961 (TIAS 7502, 23 U.S.T. 3227); (2) members of the family of a member of the diplomatic staff of a mission who form part of his or her household if they are not nationals of the United States, and members of the family of a member of the administrative and technical staff of a mission who form part of his or her household if they are not nationals or permanent residents of the United States; and (3) senior officials of the United Nations as defined in paragraph (*d*) of this section.

(*c*) "Missions", as defined in Section 2 of the Act, means missions within the meaning of the Vienna Convention on Diplomatic Relations and any missions representing foreign governments, individually or collectively, which are extended the same privileges and immunities, pursuant to law, as are enjoyed by missions under the Vienna Convention.

(*d*) "Senior United Nations official" means a United Nations official entitled to diplomatic immunity as provided in Section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1948 (21 UST 1418; 1 UNTS 16).

(*e*) "Insurance" means insurance as required by the Act and these regulations.

Section 151.3 Types of insurance coverage required.

(*a*) Every person subject to the Act and every mission shall have and maintain with respect to any motor vehicle, vessel or aircraft owned by, leased to, or furnished for the regular use of every

[2] U.S. *Federal Register*, vol. 44, No. 99, 21 May 1979, pp. 29450-42.

such person or mission liability insurance in accordance with the form, terms, and conditions provided for in these regulations.

(*b*) The insurance shall provide coverage against the following risks to third parties arising from the ownership, maintenance, or use in the United States of any motor vehicle, vessel, or aircraft:

(1) Bodily injury, including death;

(2) Property damage, including loss of use; and

(3) Any additional coverage required to be included in liability insurance policies by the jurisdiction where the motor vehicle, vessel or aircraft is principally garaged, berthed, or kept, such as uninsured motorist coverage or first party no-fault coverage.

Section 151.4 Minimum limits for motor vehicle insurance.

The insurance shall provide not less than the minimum limits of liability specified in the financial responsibility, compulsory insurance or other law of the jurisdiction where the motor vehicle is principally garaged.

Section 151.5 Recommended limits for motor vehicle insurance.

Every person subject to the Act and every mission should have and maintain insurance adequate to afford reasonable compensation to accident victims. Minimum limits of liability of $100,000 per person and $300,000 per incident for bodily injury, including death, and $50,000 per incident for property damage, including loss of use, are recommended to meet this objective.

Section 151.6 Authorized insurer.

The insurance must be issued by an insurer licensed or otherwise authorized by applicable law to do business in the jurisdiction where the motor vehicle, vessel or aircraft is principally garaged, berthed or kept.

Section 151.7 Policy terms consistent with the Act.

(*a*) The insurance shall be construed in conformity with the Act. In particular, no effect shall be given to any policy terms which are inconsistent or in conflict with those provisions of the Act stating that any suit against the insurer under the policy shall not be subject to any of the following defenses:

(1) That the insured is immune from suit;

(2) That the insured is an indispensable party; or

(3) In the absence of fraud or collusion, that the insured has violated a term of the contract, unless the contract was canceled before the claim arose.

(*b*) Notwithstanding the provisions of paragraph (*a*) of this section, the insured is expected to respond to reasonable requests from the insurer for co-operation.

Section 151.8 Evidence of insurance for motor vehicles.

(*a*) Every mission must periodically, and otherwise upon official request, furnish evidence satisfactory to the Department of State that the required insurance is in effect for the mission, its members and their families. Every senior United Nations official must also periodically furnish evidence satisfactory to the Department of State that the required insurance is in effect.

(*b*) The Department of State will accept as satisfactory evidence that the required insurance is in effect:

(1) A written statement of self-certification signed by the Chief of Mission, indicating that the mission, its members and their families have and will maintain insurance throughout the period of registration of all vehicles owned or leased or otherwise regularly used, and showing the name of the insurance company or companies and identifying each policy by number and name of insured; and

(2) A written statement of self-certification signed by each senior United Nations official, indicating that he or she has and will maintain insurance throughout the period of registration on all motor vehicles owned or leased or otherwise regularly used, and showing the name of the insurance company or companies and identifying each by number and name of insured.

(*c*) A certification under paragraph (1) of this section by a Chief of a Mission to the United Nations or by a senior United Nations official shall be delivered to the Counselor for host country affairs of the United States Mission to the United Nations. All other certifications shall be delivered to the Chief of Protocol, Department of State.

Section 151.9 Evidence of insurance required for diplomatic license plates and waiver of fees.

The Department of State will not endorse on behalf of any person subject to the Act or any mission any application for diplomatic motor vehicle license plates or any application for waiver of motor vehicle registration fee without prior receipt of satisfactory evidence from the Chief of Mission or other duly authorized official that the required insurance is in effect.

Section 151.10 Minimum limits of insurance for aircraft and/or vessels.

Insurance in respect of vessels and/or aircraft shall provide limits of liability adequate in light of reasonably foreseeable risks from the ownership, maintenance, or other regular use of vessels and/or aircraft.

Section 151.11 Notification of ownership, maintenance or use of vessel and/or aircraft; evidence of insurance.

(*a*) Each person subject to the Act and each mission must notify the Department of State in writing of the ownership, maintenance or other regular use of a vessel or aircraft in the United States by such mission or person.

(*b*) Notices under paragraph (*a*) of this section shall identify the vessel and/or aircraft with specificity, including model and manufacturer's name, and serial and registration numbers. Each notification shall be accompanied by a copy of the insurance policy or policies issued in respect of the vessel and/or aircraft. Such policy or policies need not be issued by the insurer providing liability insurance for motor vehicles.

(*c*) With regard to senior United Nations officials, missions to the United Nations and members of such missions as have diplomatic status and their families, notices and evidence of insurance under this section shall be delivered to the counselor for host country affairs of the United States Mission to the United Nations. All other notices under this section shall be delivered to the Chief of Protocol, Department of State.

Chapter II

TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaty provisions concerning the legal status of the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS.[1] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 13 FEBRUARY 1946

The following State acceded to the Convention on the Privileges and Immunities of the United Nations in 1979:[2]

State	*Date of receipt of instrument of accession*
China	11 September 1979

This brought up to 117 the number of States parties to this Convention

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2. AGREEMENTS RELATING TO MEETINGS AND INSTALLATIONS

(*a*) Agreement between the United Nations and Iraq relating to the Headquarters of the United Nations Economic Commission for Western Asia.[3] Signed at Baghdad on 13 June 1979

The United Nations and the Government of the Republic of Iraq,

Desiring to conclude an agreement for the purpose of regulating questions arising as a result of the United Nations Economic Commission for Western Asia resolution No. 35 (S-II) of 22 August 1976, endorsed by the Economic and Social Council in its resolution 2045 (LXI) of 27 October 1976, to establish the Headquarters of the Commission in Baghdad,

Whereas the Government of the Republic of Iraq agrees to grant the Commission all the necessary facilities to enable the Commission to perform its functions, including its scheduled programmes of work, projects and other activities,

Considering that the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which Iraq is a party, applies by definition to the United Nations Economic Commission for Western Asia,

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[1] United Nations, *Treaty Series*, vol. 1. p. 15.

[2] The Convention is in force with regard to each State which deposited an instrument of accession with the Secretary-General of the United Nations as from the date of its deposit.

[3] Came into force on 31 August 1979.

Desiring to conclude an agreement supplementing the Convention on the Privileges and Immunities of the United Nations in order to regulate matters not covered therein resultant from the establishment of the Headquarters of the United Nations Economic Commission for Western Asia in Baghdad,

Have agreed as follows:

Article 1

DEFINITIONS

In this Agreement,

(*a*) The expression "Commission" means the United Nations Economic Commission for Western Asia;

(*b*) The expression "Government" means the Government of the Republic of Iraq;

(*c*) The expression "Executive Secretary" means the Executive Secretary of the Commission or his authorized representative;

(*d*) The expression "Headquarters" means the headquarters site with the buildings or premises including any temporary premises occupied by the commission in accordance with the provisions set forth from time to time in the supplementary agreements referred to in article 3, paragraph 2;

(*e*) The expression "officials of the Commission" means the Executive Secretary and all members of the staff of the Commission, irrespective of nationality, with the exception of officials or employees who are locally recruited and assigned to hourly rates;

(*f*) The expression "Convention" means the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946.

Article 2

JUDICIAL PERSONALITY AND CAPACITY

The United Nations acting through the Commission shall have the capacity:

(*a*) To contract;

(*b*) To acquire and dispose of immovable and movable property;

(*c*) To institute legal proceedings.

Article 3

HEADQUARTERS

1. The Headquarters shall be under the authority and control of the Commission.

2. The Government offers and the Commission accepts the use and occupation of the Headquarters according to the terms and conditions of the present Agreement and as provided for, from time to time, in supplementary agreements to be concluded when required between the Government and the Commission.

3. The Commission may lay down internal regulations to be observed throughout the Headquarters; such regulations shall determine the rules necessary for performing work therein.

4. The Headquarters shall be inviolable. Government officers and officials shall not enter the Headquarters to perform their official duties except upon the agreement of or at the request of the Executive Secretary and under conditions agreed to by him.

5. Judicial actions, including the impounding of private property, cannot be enforced in the Headquarters.

6. Without prejudice to the provisions of the Convention or of this Agreement, the Commission shall prevent the Headquarters from being used as a refuge by persons who are avoiding arrest under any law of Iraq or who are required by the Government for extradiction to another country, or who are endeavouring to avoid service of legal process.

7. (*a*) The appropriate Iraqi authorities shall exercise due diligence to ensure that the tranquility of the Headquarters is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity;

(*b*) If so requested by the Executive Secretary, the appropriate Iraqi authorities shall provide a sufficient number of police for the preservation of law and order in the Headquarters and for the removal therefrom of persons as requested under the authority of the Commission.

8. The competent Iraqi governmental authorities shall make every possible effort to secure, on fair conditions and upon the request of Executive Secretary, the public services needed by the Commission such as postal, telephone and telegraph services, power, water and fire protection services.

9. With due regard to article 5, paragraph 1, the Commission shall avail itself, in respect of the services maintained by the Government or by the agencies subject to governmental supervision, of the reduced tariffs, if any, granted to other Governments including their diplomatic missions and to the government offices.

10. In case of *force majeure*, resulting in a complete or partial interruption of the aforesaid services, the Commission shall for the performance of its functions be accorded the priority, if any, given to national public departments.

Article 4

FREEDOM OF ACCESS TO THE HEADQUARTERS

1. The competent Iraqi authorities shall not impede the transit to or from the Headquarters of persons holding official posts therein or of persons invited thereto in connexion with the official work and activities of the Commission upon their arrival in or departure from Iraq.

2. The Government undertakes, for this purpose, to allow the entry into and residence in Iraq of the persons listed hereunder during their assignment or during the performance of their duties for the Commission, without charging visa fees and without delay, as well as exemption from any requirements of exit visa formalities upon departure from Iraq of:

(*a*) Representatives of the Members of the Commission to the conferences and meetings convened in the Headquarters country, including alternate representatives, advisers, experts and staff, as well as their spouses and dependent members of their families;

(*b*) Commission officials and experts, as well as their spouses and dependent members of their families;

(*c*) Officials of the United Nations or any of its specialized agencies or the International Atomic Energy Agency who are assigned to work for the Commission and those who have official duties with the Commission, as well as their spouses and dependent members of their families;

(*d*) Persons on mission for the Commission but who are not officials of the Commission, as well as their spouses and dependent members of their families;

(*e*) All persons invited to the Headquarters on official business.

3. Without prejudice to the special immunities which they may enjoy, persons referred to in paragraph 2 above may not be forced by the Iraqi authorities to leave Iraqi territory unless they abuse their recognized residence privileges by exercising an activity outside their official capacity with the Commission, and subject to the provisions mentioned hereunder:

(*a*) No action to force the persons referred to in paragraph 2 above to leave Iraqi territory may be taken without the consent of the Minister for Foreign Affairs who shall consult with the Executive Secretary prior to giving the consent;

(*b*) Persons enjoying diplomatic privileges and immunities under this Agreement may not be requested to leave Iraqi territory except in accordance with the practices and procedures applicable to diplomats accredited to the Government;

(*c*) It is understood that persons referred to in paragraph 2 above shall not be exempt from the reasonable application of quarantine or other health regulations.

Article 5

COMMUNICATIONS FACILITIES

1. For postal, telephone, telegraph and telephoto communications the Government shall accord to the Commission a treatment equivalent to that accorded to all other Governments including their diplomatic missions, or to other intergovernmental organizations in regard to any priorities, tariffs and charges on mail, cablegrams, telephotos, telephone calls and other communications, as well as rates for news reported to the press and radio as may be accorded.

2. The Government shall secure the inviolability of the official correspondence of the Commission and shall not apply any censorship to such correspondence. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound recordings dispatched to or by the Commission.

3. The Commission shall have the right to use codes and to dispatch and receive its correspondence and other materials by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

4. (*a*) The United Nations is authorized to operate at the Headquarters of the Commission one point-to-point telecommunications circuit in a generally easterly direction and one point-to-point circuit in a generally western direction between the Headquarters and other United Nations radio stations;

(*b*) Subject to the necessary authorization from the General Assembly and with the agreement of the Government as may be included in a supplementary agreement, the United Nations may also establish and operate at the Headquarters of the Commission:

(i) Its own short-wave sending and receiving radio broadcasting facilities (including emergency link equipment) which may be used on the same frequencies (within the tolerances prescribed for the broadcasting service by applicable Iraqi regulations) for radiograph, radiotelephone and similar services;

(ii) Such other radio facilities as may be specified by supplementary agreement between the United Nations and the appropriate Iraqi authorities;

(*c*) The United Nations shall make arrangements for the operation of the services referred to in this article with the International Telecommunication Union, the appropriate agencies of the Government and the appropriate agencies of other affected Governments with regard to all frequencies and similar matters;

(*d*) The facilities provided for in this article may, to the extent necessary for efficient operation, be established and operated outside the Headquarters of the Commission with the consent of the Government.

Article 6

PROPERTY, FUNDS AND ASSETS

The Government shall apply, *mutatis mutandis*, to the property, funds and assets of the Commission wherever they are and by whomsoever held the provisions of the Convention on the Privileges and Immunities of the United Nations especially with regard to the following:

(*a*) Immunity from legal process except where the Commission may have expressly waived immunity in a certain case, it being understood that this waiver shall not extend to any measure of execution of legal actions;

(*b*) Immunity from inspection, confiscation, seizure or expropriation in any form of executive, administrative or legislative enforcement action;

(*c*) Holding of funds and currencies of any kind and opening of accounts in any currency it desires;

(*d*) Transfer of its funds and currencies with complete freedom inside Iraq and from Iraq to any other country and vice versa;

(*e*) Exemption from all taxes and levies; it being understood, however, that the Commission shall not request exemption from taxes, which are, in fact, no more than charges for public utility services;

(*f*) Exemption from customs charges as well as limitations and restrictions on the import or export of materials imported or exported by the Commission for its official business, subject to the Iraqi laws and regulations relating to security and public health, it being understood that tax-free imports cannot be sold in Iraqi territory except under conditions agreed to by the Government;

(*g*) Exemption from all limitations and restrictions on the import or export of publications, still and moving pictures, films and sound recordings imported, exported or published by the Commission within the framework of its official activities.

Article 7

DIPLOMATIC FACILITIES, PRIVILEGES AND IMMUNITIES

1. Representatives of the Members of the Commission, participating in the conferences and meetings convened by it, shall enjoy during their residence in Iraq for the purpose of exercising their functions the diplomatic facilities, privileges and immunities granted to diplomats of comparable rank of foreign diplomatic missions accredited to the Government.

2. Without prejudice to the provisions of article 8, paragraphs 1 and 3, the Executive Secretary and the Deputy Executive Secretary shall enjoy during their residence in Iraq the facilities, privileges and immunities granted to heads of diplomatic missions accredited to the Government.

3. Without prejudice to the provisions of article 8, paragraphs 1 and 3, officials of the Commission at the P-4 level and above, regardless of their nationality, shall enjoy during their residence in Iraq and their service with the Commission the facilities, privileges and immunities granted by the Government to diplomats of comparable rank of the diplomatic missions accredited to the Government. Such facilities, privileges and immunities shall also be enjoyed by other categories of officials of the Commission as determined by the Executive Secretary in consultation with the Secretary-General of the United Nations and in agreement with the Government.

4. The facilities, privileges and immunities granted to the representatives of the Members of the Commission and to the officials mentioned in paragraphs 2 and 3 above shall extend to their spouses and dependent members of their families.

5. The immunities accorded by paragraphs 1, 2 and 3 of this article are granted in the interests of the Commission and not for the personal benefit of the individuals themselves. The immunities may be waived by the member concerned in respect of its representatives and their families, by the Secretary-General of the United Nations in respect of the Executive Secretary and his deputy and members of their families, and by the Executive Secretary in respect of all other officials of the Commission and their families.

6. The Commission shall communicate to the Government in due time the names of persons referred to in this article.

Article 8

OFFICIALS AND EXPERTS OF THE COMMISSION

1. The officials of the Commission regardless of their nationality shall enjoy in the Iraqi territory the following privileges and immunites:

(*a*) Immunity from legal process in respect of words spoken and written and all acts performed by them in their official capacity;

(*b*) Immunity from personal detention and from seizure of their personal and official effects and baggage except in case of *flagrante delicto* and in such cases, the competent Iraqi authorities shall immediately inform the Executive Secretary of the detention or the seizure;

(*c*) Exemption from any direct tax on the salaries and all other remuneration paid to them by the United Nations;

(*d*) With due regard to the provisions of paragraph 2 of this article, exemption from any military service obligations or any other obligatory service in Iraq;

(*e*) Exemption, for themselves and for their spouses and dependent members of the families, from immigration restrictions or alien registration procedures;

(*f*) Exemption for themselves for the purpose of official business from any restrictions on movements and travel inside Iraq and a similar exemption for themselves and for their spouses and dependent members of their families for recreation in accordance with arrangements agreed upon between the Executive Secretary and the Government;

(*g*) In regard to foreign exchange, including holding accounts in foreign currencies, enjoyment of the same facilities as are accorded to members of diplomatic missions accredited to the Government;

(*h*) Enjoyment, for themselves and for their spouses and dependent members of their families, of the same repatriation facilities granted to members of diplomatic missions accredited to the Government in time of international crisis;

(*i*) If they have been previously residing abroad, the right to import their furniture, personal effects and all household appliances intended for personal use free of duty when they come to reside in Iraq, which privilege shall be valid for a period of one year from the date of arrival in Iraq;

(*j*) The personal right to import, in accordance with the relevant regulations of the Iraqi import system, a car free of duty once every three years in accordance with the established diplomatic practice in Iraq during his or her assignment.

2. Iraqi officials of the Commission shall not be exempt from the military service obligations or any other obligatory service in Iraq. However, those who, by virtue of their functions, are put on a nominal list drawn up by the Executive Secretary and approved by the competent Iraqi authorities, shall, in the event of mobilization, be given special assignments in accordance with Iraqi legislation. Also such authorities shall grant, upon the request of the Commission and in the event of other Iraqi officials of the Commission being called up for national service, the waivers which might be necessary to avoid the interruption of a basic service.

3. These privileges and immunities are granted in the interests of the Commission and not for the personal benefit of the officials themselves. The Executive Secretary shall waive the immunity granted to any official whenever, in his opinion, such immunity would impede the course of justice and can be waived without prejudice to the interests of the Commission.

4. All officials of the Commission shall be provided with a special identity card certifying that they are officials of the Commission enjoying the privileges and immunities specified in this Agreement.

5. The Government shall not impede in any manner the recruitment by the Commission of local staff necessary for its proper functioning. To that end, the Government shall facilitate such recruitment in accordance with arrangements to be made with the Executive Secretary. The terms and conditions of employment for locally recruited personnel shall be in accordance with the relevant United Nations Regulations and Rules.

6. Experts, other than the officials referred to in paragraph 1 above, shall enjoy the facilities, privileges and immunities mentioned hereunder while exercising their functions or duties assigned to them by the Commission or in the course of their travel to take up these functions or perform these duties inasmuch as such facilities, privileges and immunities are necessary for the performance of their duties:

(*a*) Immunity from personal detention and from seizure of personal and official effects and baggage except in cases of *flagrante delicto* and, in such cases, the competent Iraqi authorities shall immediately inform the Executive Secretary of the detention or the seizure;

(*b*) Immunity from legal process in respect of words spoken and written and all acts performed by them in their official capacity, which immunity shall continue notwithstanding the fact that the persons concerned may have ceased to exercise their functions with the Commission or their missions for the Commission may have terminated;

(*c*) Exemption from any direct tax on the salaries and other emoluments paid to them by the Commission;

(*d*) The same facilities in respect of foreign exchange as officials of foreign Governments on a temporary official mission.

7. These facilities, privileges and immunities are granted to experts in the interests of the Commission and not for their own personal benefit. The Executive Secretary shall waive the immunity granted to an expert whenever, in his opinion, such immunity would impede the course of justice and can be waived without prejudice to the interests of the Commission.

8. The Commission shall in due time communicate to the Government the names of persons to whom this article refers.

Article 9

CO-OPERATION WITH THE APPROPRIATE IRAQI AUTHORITES

The Commission shall co-operate at all times with the appropriate authorities to facilitate the proper administration of justice, secure the observance of police regulations and avoid the occurrence of any abuse in connexion with the facilities, privileges and immunities mentioned in this Agreement.

Article 10

LAISSEZ-PASSER

1. The Government shall recognize and accept the United Nations laissez-passer issued to officials of the Commission as a valid travel document equivalent to a passport.

2. In accordance with the provisions of section 26 of the Convention on the Privileges and Immunities of the United Nations, the Government shall recognize and accept the United Nations certificate issued to experts and other persons travelling on the business of the United Nations. The Government further agrees to issue any required visas on such certificates.

Article 11

PREMISES FOR RESIDENCES

The Government undertakes to assist the Commission as far as possible in obtaining premises for use as residences of officials and experts of the Commission. If required, the Executive Secretary and the Government may conclude supplementary arrangements to implement this article.

Article 12

SETTLEMENT OF DISPUTES

1. The Executive Secretary shall take the measures necessary for ensuring the proper settlement of:

(*a*) Disputes resulting from contracts, or all disputes relating to individual rights to which the Commission is a party;

(*b*) Disputes to which an official of the Commission is a party, provided that he enjoys immunity by reason of his official post and such immunity has not been waived by the Executive Secretary.

2. Any dispute between the Government and the Commission concerning the interpretation or implementation of this Agreement which is not settled by direct negotiations or other mutually accepted method shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Minister for Foreign Affairs of the Government, one to be named by the Executive Secretary and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice. The decision of the tribunal shall be final.

Article 13

FINAL PROVISIONS

1. Without prejudice to the Commission's performance of its functions in a normal and unrestricted manner, the Government may take every precautionary measure to preserve national security, after consultations with the Executive Secretary.

2. The provisions of this Agreement shall be considered supplementary to the provisions of the Convention on the Privileges and Immunities of the United Nations. When a provision of this Agreement and a provision of the Convention deal with the same subject, both provisions shall be considered complementary whenever possible; both of them shall be applied and neither shall restrict the force of the other.

3. Consultations with respect to amendments to this Agreement shall be entered into at the request of either party and such amendments shall be made by mutual consent.

4. This Agreement shall enter into force as from the day following the date of the deposit with the Secretary-General of the United Nations of the instrument of ratification by the Government.

DONE at Baghdad, on 13 June 1979, in duplicate in the Arabic and English languages, both texts being equally authentic.

For the Economic Commission Western Asia:
(*Signed*) Mohamed SAID AL-ATTAR

For the Government of Republic of Iraq:
(*Signed*) DR. RIYADH M. S. AL-OAYSI

(*b*) Memorandum between the United Nations and Japan regarding an arrangement for the interregional Symposium on Solar Energy for Development, to be held in Tokyo from 5 to 10 February 1979.[4] Signed at New York on 29 January 1979

(*a*) PRIVILEGES AND IMMUNITIES

The Convention on the Privileges and Immunities of the United Nations shall apply in respect of the Symposium. Article VI of the Convention shall apply to the experts on mission for the United Nations who will be invited by the United Nations to participate in the Symposium, a list of whom will be communicated to the Government in due course. Articles V and VII of the Convention shall apply to the officials of the United Nations participating in or performing functions in connexion with the Symposium. Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies shall apply to the officials of the specialized agencies participating in the Symposium.

[4] Came into force on the date of signature.

(*b*) VISAS, ENTRY AND EXIT

The Government of Japan will facilitate the entry into Japan of the officials of the United Nations and of the specialized agencies, and of the experts on mission for the United Nations for the purposes of the Symposium in accordance with the Conventions mentioned in the preceding paragraph.

(*c*) Memorandum between the United Nations and Japan regarding the arrangements for the international Symposium on Solar Energy for Development jointly convened by the Japanese Organizing Committee and the United Nations with the co-operation of the Government of Japan, to be held in Tokyo from 5 to 10 February 1979.[5] Signed at New York on 2 February 1979

. . .

(*b*) The Japanese Organizing Committee will act as host for the Symposium and will provide:

. . .

5. The cost of reasonable insurance premiums for appropriate insurance coverage contracted by the United Nations against liability incurred by the United Nations with respect to the following risks:

(i) Injury to person and damage to or loss of property in the premises, including damage to the premises, referred to in paragraph (*b*) 1;

(ii) The employment of personnel employed for the Symposium.

. . .

(*d*) Exchange of letters constituting an agreement between the United Nations and Togo regarding arrangements for the Interregional Symposium on the Development Process and the Technological Options in the Developing Countries, to be held at Tonué, Togo, from 21 to 26 May 1979.[6] New York, 8 and 12 March 1979

I

Letter from the Under-Secretary-General, Department of Technical Co-operation for Development

8 March 1979

I have the honour to transmit to you herewith the draft agreement between the United Nations and the Government of Togo regarding the United Nations Interregional Symposium on the Development Process and the Technological Options in the Developing Countries.

. . .

For the purposes of convening the Symposium and bearing in mind the invitation of the President of the Togolese Republic to hold the Symposium at Lomé from 21 to 26 May 1979, the United Nations and the Government of the Togolese Republic (hereinafter called "the host Government") have agreed as follows:

. . .

[5] Came into force on the date of signature.

[6] Came into force on 12 March 1979.

Article II

PRIVILEGES, IMMUNITIES AND FACILITIES

The host Government shall:

1. Apply to the Symposium the Convention on the Privileges and Immunities of the United Nations. Officials of the United Nations participating in the Symposium shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the Symposium shall enjoy the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies. Other participants, and experts and consultants chosen by the United Nations, shall enjoy the privileges and immunities provided for experts on mission for the United Nations under article VI of the Convention on the Privileges and Immunities of the United Nations. Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and all persons performing functions in connexion with the Symposium shall enjoy such privileges, immunities and facilities as are necessary for the exercise of their functions in connexion with the Symposium;

2. Grant all officials of the United Nations and participants in the Symposium, including experts and consultants appointed by the United Nations, who are not nationals of the Togolese Republic, permission to enter and leave Togo in connexion with their participation in the Symposium. It shall issue necessary visas and authorizations free of charge and promptly.

Article IV

LIABILITY

The host Government shall be responsible for dealing with any actions, claims or other demands arising out of:

(*a*) Injury or damage to persons or property in the premises referred to in article I (1) and (2) above;

(*b*) Injury or damage to persons or property during use of the transportation referred to in article I (3);

(*c*) Recruitment for the Symposium of the personnel referred to in article I (4) and (5), and shall indemnify and hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands.

I should be most grateful if you would confirm that the Government of the Togolese Republic accepts the above provisions without reservation. If so, I propose that this note and your reply thereto shall constitute an agreement on this matter between the United Nations and the Government of the Togolese Republic.

Accept, Sir, etc.

(*Signed*) Issoufou SAIDOU DJERMAKOYE
Under-Secretary-General
Department of Technical Co-operation
for Development

II

Letter from the Permanent Representative of Togo to the United Nations

12 March 1979

Sir,

I have the honour to inform you that the text of your letter ... dated 8 March 1979 is acceptable to the Togolese Government and that it accordingly constitutes, with this reply, an

agreement between the Togolese Government and the United Nations regarding the holding at Lomé, from 21 to 26 May 1979, of the United Nations Interregional Symposium on the Development Process and the Technological Options in the Developing Countries.

Accept, Sir, etc.

(*Signed*) Akanyi-Awanyo KODJOVI
The Under-Secretary-General
Department of Technical Co-operation
for Development

(*e*) Agreement between the United Nations (Economic Commission for Latin America) and Argentina concerning the Office of the Economic Commission for Latin America in Buenos Aires.[7] Signed at Buenos Aires on 9 April 1979

Article 3

The Office of the Economic Commission for Latin America in Buenos Aires and its international staff members shall enjoy all the rights, privileges and immunities established by the Convention on the Privileges and Immunities of the United Nations and by the Agreement between the United Nations Special Fund and the Government of the Argentine Republic, both of which have been ratified by the Government of Argentina.

. . .

(*f*) Memorandum of understanding between the United Nations and Cuba in connexion with the holding of the Sixth Conference of Heads of State or Government of Non-Aligned Countries, to be held in Havana from 28 August to 7 September 1979.[8] Signed at New York on 18 April 1979

STAFF REQUIREMENTS

I. International staff

. . .

2. The provisions of the Convention on the Privileges and Immunities of the United Nations shall apply to any staff provided by the United Nations to service the Conference.

3. The Government accepts liability in respect of Appendix D of the Staff Regulations and Rules of the United Nations which covers compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations.

(*g*) Agreement between the United Nations and Mexico concerning arrangements for the 1979 session of the UNICEF Executive Board, and the Special Meeting on Children in Latin America and the Caribbean held under the auspices of the UNICEF Executive Board, to be held in Mexico City from 16 May to 1 June 1979.[9] Signed at Mexico City on 15 May 1979

. . .

[7] Came into force on the date of signature.
[8] Came into force on the date of signature.
[9] Came into force on the date of signature.

Article X

LIABILITY

The Government shall be responsible for dealing with any actions, claims or other demands against UNICEF or the United Nations arising out of: (*a*) injury to person or damage to or loss of property in the premises referred to in article IV above; (*b*) injury or damage to person or property caused by, or incurred in using, the transport services referred to in article VI, paragraph 2 above; and (*c*) the employment for the Meetings of the personnel provided by the Government pursuant to article VII above. The Government shall indemnify and hold UNICEF and the United Nations and their personnel harmless in respect of any such actions, claims or other demands, except if it is agreed by the parties hereto that such injury or damage was caused by gross negligence or wilful misconduct by the personnel of UNICEF or of the United Nations.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946, shall be applicable with respect to the Meetings in accordance with the accession to the Convention by the Government on 26 November 1962.

2. Representatives of States and of the United Nations Council for Namibia attending the Meetings shall enjoy the privileges and immunities accorded to representatives of Member States of the United Nations by article IV of the Convention.

3. Officials of UNICEF and of the United Nations performing official functions at the Meetings shall enjoy the privileges and immunities provided by articles V and VII of the Convention. The local personnel provided by the Government to perform functions in connexion with the Meetings shall enjoy only immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity in connexion with the Meetings.

4. Officials of the specialized agencies and of the International Atomic Energy Agency and representatives of other intergovernmental organizations participating in the Meetings shall enjoy the same privileges and immunities as are accorded to officials of the United Nations of a similar rank.

5. Without prejudice to the preceding paragraphs of this article, all persons performing functions in connexion with the Meetings and all those invited to the Meetings shall enjoy the necessary privileges, immunities and facilities in connexion with their participation in the Meetings.

6. The Government shall impose no impediment to transit to and from the Meetings' premises of any persons whose presence at the Meetings, is authorized by UNICEF and of any member of their immediate families. Any entry or exit visa required for such persons shall be granted without delay on application and without charge.

7. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the conference premises referred to in article IV above shall be deemed to constitute premises of the United Nations and access thereto shall be under its control and authority.

8. The participants in the meetings, representatives of information media and officials of the secretariat of the Meetings shall have the right to take out of Mexico at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into Mexico in connexion with the Meetings, or which they received during their presence at the Meetings, at the United Nations operational rate of exchange.

Article XII

IMPORT DUTIES AND TAX

1. The Government shall allow the temporary importation tax- and duty-free of all equipment, including technical equipment accompanying representatives of information media, and shall waive import duties and taxes on all supplies necessary for the Meetings.

2. The Government hereby waives import and export permits for the supplies needed for the Meetings and certified by UNICEF to be required for official use at the Meetings.

(*h*) Agreement between the United Nations and Turkey concerning arrangements for the sixth session of the Committee on Natural Resources, to be held at Istanbul from 5 to 15 June 1979.[10] Signed at Ankara on 15 May 1979

Article IX

LIABILITY

The Government shall be responsible for dealing with any action, claim or other demand against the United Nations arising out of:

(*a*) Injury to person or damage to or loss of property (whether United Nations property or other) in the premises referred to in article IV above, including damage to those premises;

(*b*) Injury to person, or damage to or loss of property caused by, or incurred in using the transportation referred to in article V above;

(*c*) The employment of the locally recruited personnel referred to in article VII above;

and the Government shall hold harmless the United Nations and its personnel in respect of any such action, claim and other demand.

Article X

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations to which the Government acceded on 22 August 1950 shall be applicable in respect of the Committee Session.

2. Representatives of States invited to the Committee Session, officials of the United Nations performing functions in connexion with the Committee Session and experts on mission for the United Nations at the Committee Session shall enjoy the privileges and immunities provided under articles IV, V, VI and VII, respectively, of the said Convention in respect of the Committee Session.

3. Representatives of the specialized agencies and representatives of the International Atomic Energy Agency at the Committee Session as well as representatives of other intergovernmental organizations invited to the Committee Session as observers shall enjoy the same privileges and immunities as are accorded to officials of comparable rank of the United Nations.

4. Observers invited by the United Nations and referred to in article II (*e*) and (*f*) of the present Agreement shall, in respect of words spoken or written and acts done by them in connexion with the Committee Session, be immune from legal process of every kind. They shall be accorded such facilities as are necessary for the independent exercise of their functions in connexion with the Committee Session.

5. The personnel provided by the Government under article VII of the present Agreement, with the exception of those assigned to hourly rates, shall enjoy immunity from legal process in

[10] Came into force on the date of signature.

respect of words spoken or written and all acts performed by them in their official capacity in connexion with the Committee Session.

6. Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and all persons performing functions in connexion with the Committee Session shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Committee Session.

7. The Government shall ensure that no impediment is imposed on transit to and from the site of the Committee Session of the following categories of persons:

(*a*) The persons referred to in article II of the present Agreement and their families;

(*b*) Representatives of the press or of other information media referred to in article III of the present Agreement;

(*c*) Members of the United Nations Secretariat and experts on mission for the United Nations performing functions in connexion with the Committee Session and their families;

(*d*) Other persons officially invited to the Committee Session by the Secretary-General of the United Nations.

They shall be permitted to enter or leave the country without delay. Any visa required by Turkish law for such persons shall be granted promptly on application and without charge.

8. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, conference premises shall be deemed to constitute premises of the United Nations and access thereto shall be under the control and authority of the United Nations.

Article XI

IMPORT DUTIES AND TAX

The Government shall allow the temporary importation and shall waive import duties and taxes for all equipment and supplies necessary for the Committee Session. It shall issue without delay to the United Nations any necessary import and export permits.

(*i*) Exchange of letters constituting an agreement between the United Nations and Italy concerning arrangements for the Workshop on Water Resources Planning: Experience in a Regional and National Context, to be held in Italy in mid-1979.[11] New York, 1 and 23 May 1979

Letter from the Under-Secretary-General for Technical Co-operation for Development

1 May 1979

Dear Mr. Rossi,

I have the honour to refer to your letter dated 16 February 1978 informing the Centre for Natural Resources, Energy and Transport that the Government of Italy had agreed to the proposal for the United Nations Workshop on "Water Resources Planning: Experience in a Regional and National Context" to be held in Italy in mid-1979 and are willing to commit themselves to the realization of such an initiative.

. . .

J. *Liability*

1. The Government shall be responsible for dealing with any action, claim or other demand arising out of:

[11] Came into force on 31 May 1979.

(*a*) Injury to person or damage to property (whether United Nations property or other) in the premises referred to under paragraph A above, including damage to those premises;

(*b*) Injury to person, or damage to property caused by, or incurred in using the transportation and accommodation referred to under paragraph E above;

(*c*) The employment of the locally recruited personnel referred to under paragraph C above;

and the Government shall hold harmless the United Nations and its personnel in respect of any such action, claim and other demand.

K. *Privileges and Immunities*

1. The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Workshop.

2. The participants referred to under subparagraph C.2 (*a*) of this letter shall enjoy the privileges and immunities accorded to experts on mission for the United Nations under article VI of the Convention.

3. Officials of the United Nations participating in, or performing functions in connexion with the Workshop shall enjoy the privileges and immunities provided under articles V and VII of the Convention.

4. Officials of the specialized agencies participating in the Workshop shall be accorded the privileges and immunities provided under articles VI and VII of the Convention on the Privileges and Immunities of the Specialized Agencies.

5. Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connexion with the Workshop shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Workshop.

6. Personnel provided by the Government pursuant to this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connexion with the Workshop with the exception of those who are assigned to hourly rates.

7. All participants and all persons performing functions in connexion with the Workshop shall have the right of unimpeded entry into and exit from Italy. Visas and entry permits, where required, shall be granted as speedily as possible and free of charge.

On receipt of acceptance by your Government of the contents of this letter, this exchange of correspondence will be taken to constitute the agreement between the United Nations and the Government of Italy concerning the arrangements for the United Nations Workshop on Water Resources Planning: Experience in a Regional and National Context.

(*Signed*) Issoufou S. DJERMAKOYE

Letter from the Deputy Permanent Representative, Chargé d'Affaires a.i., Permanent Mission of Italy to the United Nations

1884 23 May 1979

Dear Mr. Under-Secretary-General,

In acknowledging the receipt of your letter EC 321/3 (5) of 1 May 1979 addressed to Mr. Oliviero Rossi of this Mission and containing the text of the agreement between the United Nations and the Government of Italy for the convening, in Italy, of the United Nations Workshop on Water Resources Planning: Experience in a Regional and National Context, I have the honour to inform you that the Italian Government has accepted the text of the agreement contained in your letter.

. . .

(*Signed*) Giovanni SARAGAT
Deputy Permanent Representative
Chargé d'Affaires a.i.

(*j*) Agreement between the United Nations and Austria regarding arrangements for the United Nations Conference on Science and Technology for Development, to be held at Vienna from 20 to 31 August 1979.[12] Signed at New York on 3 July 1979

Article XIII

Privileges and immunities

1. The provisions relating to privileges and immunities in the Agreement between the United Nations and the Republic of Austria regarding the Headquarters of the UNIDO shall be applicable with regard to the Conference. The Convention on the Privileges and Immunities of the United Nations is hereby not affected.

2. Representatives of States and of the United Nations Council for Namibia invited to attend the Conference, officials of the United Nations performing functions in connexion with the Conference, representatives of the specialized agencies, the International Atomic Energy Agency and other intergovernmental organizations invited to attend the Conference and experts on mission for the United Nations at the Conference shall enjoy the same privileges and immunities as are accorded to the representatives to meetings of the UNIDO, to officials of the UNIDO and to experts on mission for UNIDO, respectively, under the Agreement outlined in paragraph 1.

3. Without prejudice to the provisions of paragraph 2 of this article, representatives, referred to in article II (*c*) and (*d*) and invited by the United Nations to attend the Conference, shall enjoy immunity from legal process in respect of words spoken or written or any acts performed by them in their official capacity in connexion with the Conference.

4. Personnel provided by the Government under article XI of this Agreement, with the exception of those who are assigned to hourly rates, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connexion with the Conference.

5. Without prejudice to the preceding paragraphs of this article, observers from non-governmental organizations invited by the United Nations to the Conference shall enjoy immunity from legal process in respect of words spoken or written or any act performed by them in the exercise of their functions in connexion with the Conference.

6. The Government shall ensure that no impediment is imposed on transit to and from the Conference of the following categories of persons invited by the United Nations to attend the Conference: representatives of Governments and of the United Nations Council for Namibia and their immediate families; officials and experts of the United Nations and their immediate families; representatives referred to in article II (*c*) and (*d*) and invited to the Conference and their immediate families; observers from non-governmental organizations invited to the Conference and their immediate families; representatives of the press or of radio, television, film or other information agencies accredited by the United Nations in its discretion after consultation with the Government, and other persons officially invited to the Conference by the United Nations.

7. All persons referred to in this article and all persons performing functions in connexion with the Conference who are not nationals or residents of Austria shall have the right of entry into and exit from Austria. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and, when applications are made at least two and a half weeks before the opening of the Conference, not later than two weeks before the date of the opening of the Conference. If the application for the visa is not made at least two and a half weeks before the opening of the Conference, the visa shall be granted not later than three days from the receipt of the application.

8. During the Conference including the preparatory and final stages of the Conference, the buildings and areas referred to in article III shall be deemed to constitute United Nations premises, and access thereto shall be subject to the authority and control of the United Nations.

[12] Came into force on the date of signature.

Article XIV

LIABILITY

1. The Government shall be responsible for dealing with any actions, claims or other demands against the United Nations or its personnel and arising out of:

(*a*) Injury or damage to person or property in the premises referred to in articles III, IV and V above;

(*b*) Injury or damage to person or property caused by, or incurred in using, the transport services referred to in article X, paragraph 2 above;

(*c*) The employment for the Conference of the personnel referred to in article XI above.

2. The Government shall hold harmless the United Nations and its personnel in respect of any such actions, claims or other demands.

(*k*) Agreement between the United Nations and the Syrian Arab Republic concerning arrangements for the United Nations Training Seminar on Remote Sensing of Earth Resources, to be held in Damascus from 1 to 13 December 1979.[13] Signed at New York on 1 August 1979

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the seminar. Accordingly, officials of the United Nations performing functions in connexion with the seminar shall enjoy the privileges and immunities provided under articles V and VII of the said Convention.

2. Officials of the specialized agencies attending the seminar in pursuance of paragraph (*d*) of article II of this Agreement shall enjoy the privileges and immunities provided under articles VI and VII of the Convention on the Privileges and Immunities of the Specialized Agencies.

3. Participants attending the seminar in pursuance of paragraphs (*a*) and (*c*) of article II of this agreement shall enjoy the privileges and immunities of experts on mission under article VI of the Convention on the Privileges and Immunities of the United Nations.

4. Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and all persons performing functions in connexion with the seminar shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercises of their functions in connexion with the seminar.

5. All persons referred to in article II of this Agreement and all persons performing functions in connexion with the seminar who are not nationals of Syria will be exempt from immigration restrictions and aliens registration. They shall be granted facilities for speedy travel. Entry and exit visas, if required, shall be granted free of charge and without any delay.

Article VI

LIABILITY

The Government shall be responsible for dealing with any actions, claims or other demands arising out of (*a*) injury or damage to person or property in the premises referred to in paragraph 3 (*a*) and (*b*) of article IV above; (*b*) injury or damage to persons or property occurring during use of the transportation referred to in paragraphs 3 (*g*) and (*h*) of article IV; (*c*) recruitment

[13] Came into force on the date of signature.

for the seminar of the personnel referred to in paragraphs 2, 4 and 3 (*b*), (*d*) and (*e*) of article IV and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims and other demands.

(*l*) Exchange of notes constituting an understanding between the United Nations and Canada regarding arrangements for the fifth ministerial session of the World Food Council of the United Nations, to be held in Ottawa from 3 to 7 September 1979.[14] Ottawa, 29 and 31 August 1979

I

Note from the secretariat of the World Food Council
Rome, Italy

29 August 1979

The secretariat of the World Food Council presents its compliments to the Department of External Affairs of Canada and has the honour to enclose herewith the text of an Understanding between the United Nations and the Government of Canada regarding arrangements for the fifth ministerial session of the World Food Council for the United Nations, to be held in Ottawa from 3 to 7 September 1979. This text has been the subject of detailed discussions between officials of the United Nations Secretariat and Canadian officials.

The secretariat proposes that, should the text meet the approval of the Department, it will constitute an Understanding between the United Nations and the Government of Canada.

II

Note from the Department of External Affairs
Ottawa, Canada

31 August 1979

The Department of External Affairs of Canada presents its compliments to the secretariat of the World Food Council and acknowledges receipt of its note dated 31 August 1979 transmitting the text of an Understanding between the United Nations and the Government of Canada regarding arrangements for the fifth ministerial session of the World Food Council of the United Nations, to be held in Ottawa from 3 to 7 September, 1979.

The Department is pleased to inform the secretariat that the text of the Understanding meets with the approval of the Government of Canada and constitutes an Understanding between the United Nations and the Government of Canada.

ATTACHMENT

Paragraph X. Liability

Included among the additional costs to be borne by the Government under General Assembly resolution 31/140, paragraph I.5, is the cost of reasonable insurance premiums for appropriate insurance coverage contracted by the United Nations with respect to the following risks: (*a*) injury or damage to person or property in the premises referred to in paragraph III above; (*b*) injury or damage to person or property caused by or incurred in using the transport services referred to in paragraph VI above; (*c*) the employment for the session of the personnel provided by the Government to perform functions in connexion with the session.

[14] Came into force on 31 August 1979.

Paragraph XI. Privileges and immunities

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 (hereinafter referred to as the Convention), to which the Government is a party, will be applicable in respect of the session.

2. The representatives of States referred to in paragraph II (1) (*a*) and (*b*) (i) and officials of the United Nations performing functions in connexion with the session will enjoy the privileges and immunities provided under articles IV, V and VII, as appropriate, of the Convention.

3. The representatives of the intergovernmental organizations referred to in paragraph II (1) (*b*) (ii), (iii), (iv) and (1) (*c*) will be accorded the same privileges and immunities as are enjoyed by officials of the United Nations of comparable rank.

4. All other participants referred to in paragraph II above, as registered by the Secretary-General, and all other persons performing functions in connexion with the session, will, for the purpose of this Understanding, be regarded as experts on mission for the United Nations and will enjoy the privileges and immunities provided under article VI of the Convention.

5. All participants referred to in paragraph II and all other persons performing functions in connexion with the session, and members of their immediate families, who are not nationals of Canada, will be granted visas and entry permits, where required, free of charge and as speedily as possible, so as to permit them to participate in the session without hindrance.

6. For the purpose of this Understanding, the premises referred to in paragraph III shall be deemed to constitute premises of the United Nations within the meaning of section 3 of the Convention and access thereto shall be under the authority and control of the United Nations, without prejudice to paragraph VIII of this Understanding.

Paragraph XII. Import duties and tax

1. The Government will allow the temporary importation tax and duty-free of all equipment, including technical equipment accompanying representatives of information media, and will waive import duties and taxes on supplies necessary for the session.

2. The Government hereby waives import and export permits for the supplies needed for the session and certified by the United Nations to be required for official use at the session.

(*m*) Conference Agreement between the United Nations and Indonesia regarding arrangements for the sixteenth session of the Committee for Co-ordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas, to be held in Bandung from 7 to 18 September 1979.[15] Signed at Jakarta on 3 September 1979

Article VII

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, to which the Government became a party, shall be fully applicable with respect to the Conference.

2. Representatives of members and co-operating members of the CCOP and representatives or observers from other States Members of the United Nations shall enjoy privileges and immunities provided in article IV of the Convention on the Privileges and Immunities of the United Nations. Observers of members of the specialized agencies shall enjoy the privileges and immunities provided for representatives in article V of the Convention on the Privileges and Immunities of the Specialized Agencies.

[15] Came into force on the date of signature.

3. Officials of the United Nations and experts performing functions for the United Nations at the Conference shall enjoy the privileges and immunities set forth, respectively, in articles V, VI and VII of the said Convention.

4. Without prejudice to the provisions of the preceding paragraphs, all participants and all persons performing functions in connexion with the Conference shall enjoy such privileges and immunities, facilities and courtesies, as are necessary for the independent exercise of their functions in connexion with the Conference.

5. All persons referred to in this article and all persons performing functions in connexion with the Conference who are not nationals of Indonesia shall have the right of entry into and exit from Indonesia. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and not later than two weeks before the date of the opening of the Conference when applications are made at least two and a half weeks before the opening of the Conference. If the application for the visa is not made at least two and a half weeks before the opening of the Conference, the visa shall be granted not later than three days from the receipt of the application. Arrangements will also be made to ensure that visas for the duration of the Conference are delivered at the airport to participants who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge and as speedily as possible, in any case not later than three days before the closing of the Conference.

Article VIII

LIABILITY FOR CLAIMS

The Government shall be responsible for dealing with any actions, claims or other demands arising out of:

(*a*) Injury to person or damage to or loss of property in the premises referred to in article II above;

(*b*) Injury to person, or damage to or loss of property caused by, or incurred in using the transportation referred to in article IV above;

(*c*) The employment of the personnel referred to in article VI above;

and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands.

(*n*) Agreement between the United Nations and Nigeria regarding arrangements for a joint United Nations/FAO Training Seminar on Remote Sensing Applications, to be held at Ubadan, Nigeria, from 5 to 23 November 1979.[16] Signed at New York on 11 October 1979

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the seminar. Accordingly, officials of the United Nations identified in paragraph (*e*) of article II and performing functions in connexion with the seminar shall enjoy the privileges and immunities provided under articles V and VII of the said Convention.

2. Officials of the specialized agencies attending the seminar in pursuance of paragraph (*d*) of article II of this Agreement shall enjoy the privileges and immunities provided under articles VI and VII of the Convention on the Privileges and Immunities of the Specialized Agencies.

[16] Came into force on the date of signature.

3. Participants attending the seminar in pursuance of paragraphs (*a*) and (*c*) of article II of this Agreement shall enjoy the privileges and immunities of experts on mission under article VI of the Convention on the Privileges and Immunities of the United Nations.

4. Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and all persons performing functions in connexion with the seminar shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the seminar.

5. All persons referred to in article II of this Agreement and all persons performing functions in connexion with the seminar who are not nationals of Nigeria will be exempt from immigration restrictions and aliens registration. They shall be granted facilities for speedy travel. Entry and exit visas, if required, shall be granted free of charge and without delay.

Article VI

LIABILITY

The Government shall be responsible for dealing with any actions, claims or other demands arising out of (*a*) injury or damage to persons or property in the premises referred to in paragraphs 3 (*a*) and (*b*) of article IV above; (*b*) injury or damage to persons or property occurring during use of the transportation referred to in paragraphs 3 (*h*) and (*i*) of article IV; (*c*) recruitment for the seminar of the personnel referred to in paragraphs 2, 4 and 3 (*b*), (*d*), (*e*) and (*f*) of article IV and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands.

(*o*) Agreement between the United Nations and India regarding arrangements for the Third General Conference of the United Nations Industrial Development Organization, to be held at New Delhi from 21 January to 8 February 1980.[17] Signed at Vienna on 12 November 1979

VII. PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations shall be applicable with respect to the Conference. Accordingly, the representatives of States and of the United Nations Council for Namibia at the Conference, officials of the United Nations performing functions in connexion with the Conference and experts on missions for the United Nations performing functions in connexion with the Conference shall enjoy the privileges and immunities provided in the said Convention for representatives of Member States and officials of the United Nations and experts on mission for the United Nations with the exceptions provided for in article IV, section 15 of the said Convention.

2. Observers from the specialized agencies at the Conference shall enjoy the privileges and immunities under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies. Observers from the International Atomic Energy Agency at the Conference shall enjoy the privileges and immunities provided under articles VI and IX of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency. Observers from other intergovernmental and non-governmental organizations invited to the Conference as observers shall enjoy the privileges and immunities provided under article V of the Convention on the Privileges and Immunities of the United Nations.

3. Without prejudice to the Convention on the Privileges and Immunities of the United Nations, all persons performing functions in connexion with the Conference, including representatives of international non-governmental organizations, representatives of foreign information media

[17] Came into force on the date of signature.

and other persons invited to the Conference by the United Nations who are duly accredited as such shall enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity in connexion with the Conference.

4. The Government shall ensure that no impediment is imposed on transit to and from the Conference of the following categories of persons attending the Conference: representatives of Governments and of the United Nations Council for Namibia and their immediate families; representatives of specialized agencies, intergovernmental organizations and their immediate families; officials and experts of the United Nations and their immediate families; observers of the international non-governmental organizations having consultative status with UNIDO and with the Economic and Social Council of the United Nations (ECOSOC); representatives of the press or of radio, television, film or other information agencies accredited by the United Nations upon consultation with the Government and other persons officially invited to the Conference by the United Nations.

5. All the persons referred to in this section with the exception of local staff recruited by the Government shall have the right of entry into and exit from India. They shall be granted reasonable facilities for speedy travel. Visas where required shall be granted, free of charge as speedily as possible and, when applications are received at least two and a half weeks before the opening of the Conference, not later than two weeks before the date of the Conference. If the application for the visa is not made at least two and a half weeks before the opening of the Conference, the visa shall be granted not later than three days from the receipt of the application. Exit permits, where required, shall be granted free of charge and as speedily as possible, in any case not later than three days before the closing of the Conference.

6. In addition, all participants and all persons performing functions in connexion with the Conference shall enjoy such facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Conference.

7. During the Conference, including the preparatory and final stages of the Conference, the buildings and areas referred to in article II shall be deemed to constitute United Nations premises and access thereto shall be subject to the authority and control of UNIDO.

8. The Government shall allow the importation of all equipment and supplies necessary for the Conference, including those needed for the official requirements and entertainment schedule of the Conference, and exempt them from the payment of the import duties and other duties and taxes to which they are liable. It shall issue without delay to the United Nations any necessary import and export permits.

IX. LIABILITY

1. The Government shall, either directly or through appropriate insurance coverage, be responsible for dealing with any actions, claims or other demands against the United Nations or its personnel and arising out of:

(*a*) Injury or damage to person or property in the premises referred to in article II above and in annex II of this Agreement;

(*b*) Injury or damage to person or property caused by, or incurred in using, the transport services referred to in article IV, paragraph 2 above;

(*c*) The employment for the Conference of the personnel referred to in article III, paragraphs 2 and 3 above and in annex IV to this Agreement.

2. The Government shall hold harmless the United Nations and its personnel in respect of such actions, claims or other demands, except when it is agreed by the parties hereto that such damage or injury is caused by gross negligence or wilful misconduct of the United Nations personnel, in which case steps shall be taken to establish the civil liability of the party responsible.

Any such actions, claims or other demands arising out of events attributable to *force majeure* shall exempt the Government and the United Nations from any obligation.

3. Notwithstanding anything contained in paragraphs 1 and 2 above, the Government and the United Nations shall not be liable for any consequential, remote or indirect damages arising out of such actions, claims or other demands.

(*p*) Agreement between the United Nations and Cuba regarding arrangements for the Interregional Preparatory Meeting for the Third General Conference of the United Nations Industrial Organization preceded by a preparatory meeting of African Ministers.[18] Signed at New York on 13 December 1979

Article IX

LIABILITY

The Government shall be responsible for dealing with any action, claim or other demand arising out of:

(*a*) Injury to person, or damage to or loss of property (whether United Nations property or other) in the premises referred to in article IV above, including damage to those premises;

(*b*) Injury to person, or damage to or loss of property caused by, or incurred in using the transportation referred to in article V (2), above;

(*c*) The employment of the locally recruited personnel referred to in article VII above;

and the Government shall hold harmless the United Nations and its personnel in respect of any such action, claim and other demand.

Article X

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, to which the Government acceded on 9 September 1959, shall be applicable in respect of the Conference.

2. Representatives of States invited to the Conference, officials of the United Nations performing functions in connexion with the Conference and experts on mission for the United Nations at the Conference shall enjoy the privileges and immunities provided under articles IV, V and VI, respectively, and VII of the said Convention.

3. Representatives from the specialized agencies at the Conference shall enjoy the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies to which the Government acceded on 13 September 1972. Representatives of other intergovernmental organizations invited to the Conference as observers shall enjoy the same privileges and immunities as are accorded to the United Nations officials of comparable rank.

4. The personnel provided by the Government under article VII of the present agreement with the exception of those assigned to hourly rates shall enjoy immunity from legal process in respect of words spoken or written and to acts performed by them in their official capacity in connexion with the Conference.

5. Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and all persons performing functions in connexion with the Conference shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Conference.

6. The Government shall ensure that no impediment is imposed on transit to and from the site of the Conference of the following categories of persons:

[18] Came into force on the date of signature.

(*a*) The persons referred to in article II of the present Agreement and their families;

(*b*) Representatives of the press or of other information media, referred to in article III of the present Agreement;

(*c*) Members of the United Nations Secretariat and experts on mission for the United Nations performing functions in connexion with the Conference and their families;

(*d*) Other persons officially invited to the Conference by the Secretary-General of the United Nations.

They shall be permitted to enter or leave the country without delay. Any visa required by Cuban law for such persons shall be granted promptly on application and without charge.

7. Distinguished guests officially invited to the Conference by the Government shall be given access to the conference area by the United Nations.

8. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, conference premises shall be deemed to constitute premises of the United Nations and access thereto shall be under the control and authority of the United Nations.

Article XI

IMPORT DUTIES AND TAX

The Government shall allow the temporary importation and shall waive import duties and taxes for all equipment and supplies necessary for the Conference. It shall issue without delay to the United Nations any necessary import and export permits.

(*q*) Agreement between the United Nations and the Upper Volta regarding arrangements for the United Nations Regional Training Seminar on Remote Sensing Applications for Agriculture, Rangeland and Hydrology.[19] Signed at New York on 14 December 1979

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Seminar. Accordingly, officials of the United Nations assigned to the Seminar shall enjoy the privileges and immunities provided under articles V and VII of the said Convention.

2. Officials of the specialized agencies attending the Seminar in pursuance of article II (*d*) of this Agreement shall enjoy the privileges and immunities provided under articles VI and VII of the Convention on the Privileges and Immunities of the Specialized Agencies.

3. Participants attending the Seminar in pursuance of article II (*a*) and (*c*) of this Agreement shall enjoy the privileges and immunities of experts on mission under article VI of the Convention on the Privileges and Immunities of the United Nations.

4. Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and any person assigned to the Seminar shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Seminar.

5. All persons enumerated in article II of this Agreement and all persons assigned to the Seminar who are not nationals of the Upper Volta shall be exempted from all the formalities applicable to immigrants and aliens.

[19] Came into force on the date of signature.

Article VI

LIABILITY

The Government shall take full responsibility for any actions, claims or other demands relating to (*a*) injury or damage to persons or property in the premises referred to in article IV 3 (*a*) and (*b*) above; (*b*) injury or damage to persons or property during use of the transportation referred to in article IV 3 (*g*) and (*h*) above; (*c*) the recruitment for the Seminar of the personnel referred to in article IV 2, 3 (*d*) and (*e*), and 4.

The Government shall likewise hold the United Nations and its personnel totally harmless in such circumstances.

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3. AGREEMENTS RELATING TO THE UNITED NATIONS CHILDREN'S FUND: REVISED MODEL AGREEMENT CONCERNING THE ACTIVITIES OF UNICEF

Article VI

CLAIMS AGAINST UNICEF

[See *Juridical Yearbook*, 1965, pp. 31 and 32.]

Article VII

PRIVILEGES AND IMMUNITIES

[See *Juridical Yearbook*, 1965, p. 32.]

Agreement between the United Nations (United Nations Children's Fund) and the Government of Viet Nam concerning assistance from UNICEF.[20] Signed at Hanoi on 12 February 1979

This agreement contains articles similar to articles VI and VII of the revised model agreement.

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4. AGREEMENTS RELATING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME: STANDARD BASIC AGREEMENT CONCERNING ASSISTANCE BY THE UNITED NATIONS DEVELOPMENT PROGRAMME[21]

Article III

EXECUTION OF PROJECTS

. . .

5. [See *Juridical Yearbook*, 1973, p. 24.]

. . .

[20] UNICEF, *Field Manual*, vol. II, part IV-2, appendix A (1 October 1964).

[21] Document UNDP/ADM/LEG/34 of 6 March 1973. The standard basic agreement prepared by the Bureau of Administration and Finance in consultation with the Executing Agencies of UNDP represents a consolidation of the standard Special Fund, Technical Assistance, Operational Assistance and Office Agreements of the UNDP, which it is designed to replace.

Article IX

PRIVILEGES AND IMMUNITIES

[See *Juridical Yearbook*, 1973, p. 25.]

Article X

FACILITIES FOR EXECUTION OF UNDP ASSISTANCE

[See *Juridical Yearbook*, 1973, pp. 25 and 26.]

Article XIII

GENERAL PROVISIONS

4. [See *Juridical Yearbook*, 1973, p. 26.]

Agreements between the United Nations (United Nations Development Programme) and the Governments of Tuvalu,[22] China,[23] Djibouti,[24] and the Democratic People's Republic of Korea,[25] concerning assistance from the United Nations Development Programme. Signed, respectively, at Suva on 16 January 1979, at New York on 29 June 1979, at New York on 5 October 1979 and at New York on 8 November 1979

These agreements contain provisions similar to articles III, 5, IX, X and XIII, 4 of the standard basic agreement.

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5. AGREEMENTS RELATING TO THE UNITED NATIONS REVOLVING FUND FOR NATURAL RESOURCES EXPLORATION

(*a*) Agreement (Natural Resources Exploration Project) between the United Nations (United Nations Revolving Fund for Natural Resources Exploration) and Cyprus.[26] Signed at Nicosia on 17 October 1978

Article V

PRIVILEGES AND IMMUNITIES

Section 5.01. The Government shall apply to the Fund and any United Nations organ acting on behalf of the Fund in carrying out the Project or any part thereof, as well as to the Fund's and such organ's officials, property, funds and assets, the provisions of the Convention on the Privileges and Immunities of the United Nations.

Section 5.02. The Government shall apply to any specialized agency acting on behalf of the Fund in carrying out the Project or any part thereof, as well as to such specialized agency's officials,

[22] Came into force on the date of signature.
[23] Applied provisionally from 29 June 1979.
[24] Came into force on the date of signature.
[25] Came into force on the date of signature.
[26] Came into force on 15 January 1979.

property, funds and assets, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies, including any annex to such Convention applicable to such specialized agency. In case the IAEA acts on behalf of the Fund in carrying out the Project or any part thereof, the Government shall apply to the IAEA and to its officials, property, funds and assets, the Agreement on the Privileges and Immunities of the IAEA.

Section 5.03. (*a*) The Government shall grant all persons, firms or organizations and their staff (other than government nationals employed locally) acting on behalf of the Fund, any specialized agency or the IAEA in carrying out the Project or any part thereof who are not covered by sections 5.01 and 5.02 of this Agreement, the same privileges and immunities as are accorded to officials of the United Nations, the specialized agency concerned or the IAEA under sections 18, 19 or 18 respectively, of the Conventions on the Privileges and Immunities of the United Nations or of the Specialized Agencies, or of the Agreement on the Privileges and Immunities of the IAEA. Nothing in this Agreement shall be construed to limit the privileges, immunities or facilities conferred upon such persons, firms or organizations and their staff in any other instrument.

(*b*) For the purposes of the instruments on privileges and immunities referred to in paragraph (*a*) of this section 5.03:

(i) All papers and documents in the possession or under the control of any person, firm or organization and their staff referred to in such paragraph (*a*) relating to the Project or any part thereof shall be deemed to be documents belonging to the United Nations, the specialized agencies concerned, or the IAEA, as the case may be; and

(ii) Any equipment, materials and supplies as well as personal and household effects brought into or purchased, or leased within the territories of the Government by any such person, firm or organization and their staff shall be deemed to be the property of the United Nations, the specialized agency concerned, or the IAEA, as the case may be.

(*c*) The Government shall exempt any person, firm or organization and their staff referred to in paragraph (*a*) of this section 5.03 from, or bear the cost of, any taxes, duties, fees or levies imposed under the laws and regulations in effect in its territories or by any political subdivision or agency therein on such person, firm or organization and their staff in respect of any payment made to them in connexion with the carrying out of the Project or any part thereof.

(*d*) The Fund shall keep the Government currently informed about the persons, firms or organizations and their staff to whom the provisions of this section 5.03 shall apply.

Article VI

GOVERNMENT'S ASSISTANCE TO THE PROJECT

. . .

Section 6.02. (*a*) The Government shall take any measures which may be necessary to exempt the Fund and any persons, firms or organizations (including their officials or staff) acting on behalf of the Fund in carrying out the Project or any part thereof, from any laws and regulations in effect in its territories which may interfere with the carrying out of the Project or with the payment to the Fund of any Replenishment Contribution due the Fund hereunder, and shall grant them such other facilities as may be necessary for the speedy and efficient carrying out of the Project.

(*b*) The Government shall in particular grant to the Fund and to any persons, firms or organizations (including their officials or staff) acting on behalf of the Fund in carrying out the Project or any part thereof, the following rights and facilities:

(i) Prompt issuance without cost of necessary visas, licenses or permits;

(ii) Access to any part of the Exploration Area and the Target Area or Areas, whether in public or private ownership;

(iii) The most favourable legal rate of exchange;

(iv) Any permits necessary for the importation of equipment, materials, supplies, personal and household goods and goods for their personal consumption, and for their subsequent exportation;

(v) Prompt clearance through customs of the items referred to in paragraph (iv) above;

(vi) Exemption from, or reimbursement for, any taxes, fees or charges that might otherwise be payable to a public entity or a private party under the laws and regulations in effect in the Government's territories with respect to the carrying out of the Project; and

(vii) Exemption from any taxes, fees or charges that might otherwise be payable under the laws and regulations in effect in the Government's territories on (A) the payment of any Replenishment Contribution to the Fund or on the transfer thereof to any account outside the Government's territories, or (B) on or in connexion with the execution, delivery or registration of this Agreement.

Section 6.03. The Project being carried out for the benefit of the Government and its people, the Government shall bear all risks arising therefrom. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Fund, or against any persons, firms or organizations (including their officials or staff) acting on behalf of the Fund in carrying out the Project or any part thereof, and shall indemnify them for any liabilities arising from the carrying out of the Project or any part thereof, provided that the provisions of this section 6.03 shall not apply if the Government and the Fund agree that a liability arises from the wilful misconduct or gross negligence of any such official or staff member. Such indemnification shall include attorney's fees, court costs and other expenses in connexion with the defence against, or settlement of, claims on account of such liability.

(*b*) Agreement (Natural Resources Exploration Project) between the United Nations (United Nations Revolving Fund for Natural Resources Exploration) and Panama.[27] Signed at Panama on 26 October 1977

This agreement contains provisions similar to article V and sections 6.02 and 6.03 of article VI of the agreement reproduced under (*a*) above.

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6. AGREEMENT BETWEEN THE UNITED NATIONS ENVIRONMENT PROGRAMME AND NORWAY ON THE PROVISION OF JUNIOR PROFESSIONAL OFFICERS.[28] SIGNED AT NAIROBI ON 29 JANUARY 1979

1.1 Whenever UNEP determines that there exists a need for junior Professional officers which might appropriately be met by candidates from Norway, UNEP may request Norway to make available to it nominations of junior Professional officers for service with UNEP. . . .

2.1 Candidates selected for appointment by UNEP shall receive appointments as junior Professional officers and shall be issued Letters of Appointment constituting them members of the staff of UNEP. As such, they shall have the status of international civil servants and shall be subject to the relevant rules and regulations of the United Nations as set forth in their Letters of Appointment. . . .

. . .

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[27] Came into force on 16 March 1979.

[28] Came into force on the date of signature.

B. Treaty provisions concerning the legal status of intergovernmental organizations related to the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES.[29] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

Status of the Convention

In 1979, the following States acceded to the Convention or, if already parties, undertook by a subsequent notification to apply the provisions of the Convention, in respect of the specialized agencies indicated below.[30]

State		*Date of receipt of instrument of accession or notification*	*Specialized agencies*
China[31]	Accession	11 September 1979	FAO (second revised text of annex II),[32] ICAO, UNESCO, WHO (third revised text of annex VII), UPU, ITU, WMO, IMCO (revised text of annex XII)[33]
Germany, Federal Republic of	Notification of undertaking to apply the Convention to further specialized agencies	20 August 1979	WIPO, IFAD
Sweden	Notification of undertaking to apply the Convention to further specialized agencies	26 January 1979 8 February 1979	IFAD WIPO
Yugoslavia	Notification of undertaking to apply the Convention to further specialized agencies	26 January 1979 8 February 1979	IFAD WIPO

As of 31 December 1979, 88 States were parties to the Convention.[34]

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[29] United Nations, *Treaty Series*, vol. 33, p. 261.

[30] The Convention is in force with regard to each State which deposited an instrument of accession and in respect of specialized agencies indicated therein or in a subsequent notification as from the date of deposit of such instrument or receipt of such notification.

[31] The Government of China has reservations on the provisions of section 32, article IX, of the said Convention.

[32] See *Juridical Yearbook*, 1965, chap. II, sect. B, 3.

[33] See *Juridical Yearbook*, 1968, chap. II, sect. B, 4 (*b*).

[34] For the list of those States, see *Multilateral Treaties in respect of which the Secretary-General performs Depositary Functions* (ST/LEG/SER.D/11, United Nations publication, Sales No. E.78.V.6), chap. III, sect. 2.

2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Agreements based on the standard "Memorandum of Responsibilities" in respect of FAO sessions.

Agreements concerning specific sessions held outside FAO headquarters containing provisions on privileges and immunities of FAO and participants similar to the standard text (published in *Juridical Yearbook*, 1972, p. 32) were concluded in 1979 with the Governments of the following countries acting as hosts to such sessions:

Australia,[35] Austria, Belgium, Cyprus, Denmark, Dominican Republic, France,[35] Gambia, Greece, India,[35] Indonesia, Iraq, Italy,[35] Japan,[35] Jordan, Kenya, Mexico,[35] Morocco, Norway,[35] Panama, Paraguay, Philippines, Portugal, Qatar, Saudi Arabia, Senegal, Spain,[35] Sri Lanka,[35] Sudan, Sweden, Togo, Tunisia, Turkey, United Kingdom,[35] United Kingdom/Hong Kong,[35] United Republic of Tanzania.

(*b*) Agreements based on the standard "Memorandum of Responsibilities" in respect of group seminars, workshops, training courses or related study tours.

Agreements concerning specific training courses, etc., and containing provisions on privileges and immunities of FAO and participants similar to the standard text[36] were concluded in 1979 with the Governments of the following countries acting as hosts to such training activities:

Colombia, Costa Rica, Ecuador, France,[35] India,[35] Indonesia, Jamaica, Jordan, Kenya, Liberia, Mexico,[35] Norway, Peru, Philippines, Republic of Korea, Senegal, Sierra Leone, Sri Lanka,[35] Suriname, Thailand, Trinidad and Tobago, Tunisia, United Republic of Cameroon,[35] Venezuela.

(*c*) Agreements for the establishment of an FAO Representative's office.

In 1979, agreements for the establishment of an FAO Representative's office, providing *inter alia* for privileges and immunities, were concluded with the following countries:

Brazil, Democratic Yemen, Dominican Republic, Iraq, Mali, Mozambique, Sri Lanka and Yemen.

Some of these agreements were concluded in the form of exchanges of letters.

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Agreements relating to conferences, seminars and other meetings

(*a*) Agreement between the Government of Suriname and the United Nations Educational, Scientific and Cultural Organization concerning the expert meeting on utilization of social sciences by policy-makers. Signed at Paris on 17 July 1979

III. *Privileges and immunities*

The Government of Suriname shall apply, in all matters relating to the meeting, the Convention on the Privileges and Immunities of the Specialized Agencies, and annex IV thereto relating to

[35] Certain departures from, or amendments to, the standard text were introduced at the request of the host Government.

[36] See *Juridical Yearbook*, 1972, chap. II, sect. B, 2.

UNESCO. In particular, it shall ensure that no restriction is placed upon the right of entry into, sojourn in and departure from its territory of any person entitled to participate in this meeting, without distinction of nationality.

(*b*) Agreements containing provisions similar to that referred to in paragraph (*a*) above were also concluded between UNESCO and the Governments of Brazil, Bulgaria, Chile, Costa Rica, Czechoslovakia, Ecuador, Egypt, Guatemala, Guyana, Hungary, India, Indonesia, Iraq, the Ivory Coast, Liberia, Malaysia, Mali, Malta, Mexico, Nepal, Panama, Peru, the Philippines, the Republic of Korea, San Marino, Spain, Thailand, Trinidad and Tobago, Tunisia, the Union of Soviet Socialist Republics, the United Republic of Tanzania, the Upper Volta, Venezuela and Yemen.

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4. WORLD HEALTH ORGANIZATION

Basic agreements on technical advisory co-operation were concluded in 1979 between WHO and the following Member States:

Member State	*Place of signature*	*Date of signature*
Cuba	Washington/Havana	28 June/21 August 1979
Solomon Islands	Manila/Honiara	27 June/13 July 1979

These agreements contain provisions similar to article I, paragraph 6, and article V of the Agreement between the World Health Organization and Guyana.[37]

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5. WORLD METEOROLOGICAL ORGANIZATION

(*a*) Agreement on the Precipitation Enhancement Project (PEP) between WMO, the Government of Spain and other member States of WMO participating in the Experiment. Signed at Madrid on 23 January 1979

Section 6. Privileges and immunities of WMO in Spain

(*a*) The Organization's juridical personality in Spain shall be provided for in Article II, Section 3, of the Convention on Privileges and Immunities of the Specialized Agencies to which the Government of Spain has acceded and which it has applied to the Organization since 26 September 1974.

(*b*) The privileges and immunities of officials of the Organization assigned to Spain for the requirements of the Experiment shall be governed by the terms of that Convention.

(*c*) The Government of Spain shall grant the personnel of other participating Member States assigned to Spain for the purposes of the Experiment the same privileges and immunities accorded to officials of the Organization.

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[37] *Ibid.*

(*b*) Agreement on the Global Weather Experiment between WMO and the Government of Mexico. Signed at Geneva on 25 April 1979

Section 6. Privileges and immunities

The Government of Mexico grants to the personnel participating in the Experiment the privileges and immunities as set forth in Article VI of the Convention on Privileges and Immunities of the United Nations with the reservations made by the Government of Mexico as ratified by it in the Official Journal of the Federation of 10 May 1963.

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6. INTERNATIONAL ATOMIC ENERGY AGENCY

(*a*) Agreement on the Privileges and Immunities of the International Atomic Energy Agency,[38] approved by the Board of Governors of the Agency on 1 July 1959:

Deposit of instruments of acceptance

No instrument of acceptance was deposited during 1979. The number of Member States parties to this agreement stands at 49.

(*b*) Incorporation of provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency by reference in other agreements:

Article 10 of the Agreement between the Independent State of Western Samoa and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force on 22 January 1979 (INFCIRC/268);

Article 10 of the Agreement between the Republic of Suriname and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force on 2 February 1979 (INFCIRC/269);

Article 10 of the Agreement between the Republic of Paraguay and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force on 20 March 1979 (INFCIRC/279);

Article 10 of the Agreement between the Republic of Portugal and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force on 14 June 1979 (INFCIRC/272);

Article 10 of the Agreement between the Republic of Peru and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force on 1 August 1979 (INFCIRC/273);

Article 10 of the Agreement between the Principality of Liechtenstein and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force on 4 October 1979 (INFCIRC/275);

Article 10 of the Agreement between the Republic of Costa Rica and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty for the Prohibition

[38] See United Nations, *Treaty Series*, vol. 374, p. 147.

of Nuclear Weapons in Latin America and the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force on 22 November 1979 (INFCIRC/278).

(*c*) Provisions affecting the privileges and immunities of IAEA in Austria:

Seat agreements

A number of seat agreements for the new headquarters buildings at the Vienna International Centre (VIC) were under negotiation with the Austrian Government throughout 1979. One such agreement concerning the delineation of the area of VIC was concluded between Austria, the United Nations and IAEA.

Part Two

LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter III

GENERAL REVIEW OF THE LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. General review of the legal activities of the United Nations

1. DISARMAMENT AND RELATED MATTERS[1]

(a) Comprehensive approaches to disarmament

(i) *General and complete disarmament*

General and complete disarmament under effective international control remains the goal of the United Nations in the disarmament field. Facing the reality of the continuing arms race and the great distance which separates the world from that goal, Member States have tended to focus in recent years on efforts to achieve a turning-point — a slowing down and cessation of the arms race — from which the first steps to real disarmament could be implemented while taking into account the valid security needs of States. A wide variety of ideas has been advanced and a great deal of work is being directed towards this more limited objective in the hope that it may be reached in the foreseeable future.

First substantive session of the Disarmament Commission

During the deliberations in the plenary meetings of the first substantive session of the Disarmament Commission held in May-June 1979[2] general and complete disarmament was referred to in one way or another by many representatives often as the accepted end-point towards which all disarmament efforts must lead, or in connexion with the development of a comprehensive programme of disarmament. In the recommendations contained in its report to the General Assembly[3] the Commission stated that general and complete disarmament, which had been advocated by the General Assembly of the United Nations for nearly two decades, must continue to be the ultimate goal of all endeavours undertaken in the sphere of disarmament. The comprehensive programme of disarmament, it went on to say, should be a carefully worked out package of interrelated measures in the field of disarmament which would lead the international community towards the goal of general and complete disarmament under effective international control.

Consideration by the Committee on Disarmament

At its 1979 session the Committee on Disarmament clearly enshrined its commitment to promotion of the attainment of general and complete disarmament in the introduction to its agenda and in area X thereof which dealt with a comprehensive programme of disarmament and, in that connexion, included the words "leading to general and complete disarmament under effective international control". Some other areas, such as reduction of military budgets, reduction of armed forces and disarmament and international security, are also connected to the ultimate goal. Although since early in the debate of the Committee many members expressed their Governments' over-all

[1] This summary has been prepared on the basis of *The United Nations Disarmament Yearbook*, vol. 4: 1979 (United Nations publication, Sales No. E.80.IX.6)

[2] See A/CN.10/PV.9-22 and A/CN.10/PV.9-22/Corrigendum.

[3] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 42* (A/34/42), para. 19.

views relating to the arms race and general disarmament,[4] the Committee did not reach a stage where it could cover the area concerning the comprehensive programme in its programme of work. Consequently, general and complete disarmament was noted only in the context of broad views and positions.

Consideration by the General Assembly

In the 1979 debates in the General Assembly, both in the plenary meetings and in the First Committee,[5] the recognition of general and complete disarmament as the essential end-goal was frequently reaffirmed by States from all political and geographical groupings. In the First Committee, six separate draft resolutions were introduced under the agenda item entitled "General and complete disarmament" and all were later adopted by the General Assembly as resolutions 34/87 A to F on 11 December 1979. Resolution A on radiological weapons and resolution F on strategic arms limitation talks are referred to under the respective headings of the present summary.

By resolution C on non-stationing of nuclear weapons the General Assembly, *inter alia*, considered that the non-stationing of nuclear weapons on the territories of States where there are no such weapons at present would constitute a step towards the larger objective of the subsequent complete withdrawal of nuclear weapons from the territories of other States, thus contributing to the prevention of the spread of nuclear weapons, leading eventually to the total elimination of nuclear weapons; the Assembly also believed it necessary to examine possibilities for an international agreement on the non-stationing of nuclear weapons on the territories of States where there are no such weapons at present, requesting the views of Member States on the possibility of such an agreement.[6]

By resolution D on the prohibition of fissionable material for weapons purposes, the Assembly, *inter alia*, considered that the cessation of production of fissionable material for weapons purposes and the progressive conversion and transfer of stocks to peaceful uses would be a significant step towards halting and reversing the nuclear arms race as well as the prohibition of the production of fissionable material for nuclear weapons and other nuclear explosive devices.[7]

By resolution B on confidence-building measures, the Assembly, *inter alia*, recognizing the need and urgency of first steps to diminish the danger of armed conflicts resulting from misunderstandings or from misinterpretations of military activities, and reaffirming its conviction that commitment to confidence-building measures could contribute to strengthening the security of States, recommended that all States should continue to consider arrangements for specific confidence-building measures, taking into account the specific conditions and requirements of each region; it also decided to undertake a comprehensive study on confidence-building measures, requesting the Secretary-General to carry it out with the assistance of a group of governmental experts.[8]

Finally, by resolution E the General Assembly reaffirmed the central role and primary responsibility of the United Nations in the field of disarmament and, *inter alia*, decided to request the Secretary-General to carry out, with the assistance of qualified governmental experts, a comprehensive study assessing present institutional requirements and future estimated needs in the United Nations management of disarmament affairs.[9]

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[4] See CD/53 and Corr.1, appendix IV, vols. I-III, documents CD/PV.1-52.

[5] *Official Records of the General Assembly, Thirty-fourth Session, Plenary Meetings*, 1st, 5th-32nd and 97th meetings; *ibid., Thirty-fourth Session, First Committee*, 4th-44th meetings, and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[6] Resolution 34/87 C, adopted by a recorded vote of 99 to 18, with 19 abstentions.

[7] Resolution 34/87 D, adopted by a recorded vote of 118 votes to 9, with 12 abstentions.

[8] Resolution 34/87 B, adopted without a vote.

[9] Resolution 34/87 E, adopted by a vote of 121 to 9, with 9 abstentions.

(ii) *Follow-up of the special session of the General Assembly devoted to disarmament*

During 1979, much of the activity of member States represented in the three major bodies — the Disarmament Commission, the Committee on Disarmament and the General Assembly — was directed towards setting in motion the disarmament machinery provided for in the Final Document of the special session, in order to enable that machinery to work towards implementation of the concrete measures of disarmament and other recommendations of the Assembly deriving from that session. Because of the different natures of the Disarmament Commission and the Committee on Disarmament, the former, after having settled procedural matters, was able to devote detailed attention to substantive issues on its agenda; its most important achievement was to reach agreement by consensus on the elements of a comprehensive programme of disarmament.[10] The latter body, however, had to devote most of the first part of its session to establishing its rules of procedure and its agenda and programme of work. It was mainly during the second part of its session that the Committee was able to initiate in-depth consideration of various substantive items.[11]

The General Assembly, for its part, overwhelmingly welcomed the results of the special session and reiterated its determination to promote arms regulation and disarmament efforts. However, a number of States expressed concern over the slow pace of disarmament negotiations and the paucity of results achieved so far.[12] In 1979, the General Assembly again adopted a large number of resolutions under the item concerning the question of follow-up of the special session on disarmament.[13] The agenda item has served both as a means of keeping issues on which agreement was reached at the special session alive and up to date, and as a vehicle for dealing with proposals placed before the special session which were not dealt with fully at the time or on which agreement was not reached.

Thus the activities in the area of follow-up in the various bodies are designed, first, to provide continuation of action on both new and established issues in accordance with the provisions of the Final Document of the special session and subsequent Assembly resolutions and, secondly, in a broader perspective, to identify areas of particular concern and thus enhance the search for more substantial results in the attempt to curb and reverse the arms race.

(iii) *Development of a comprehensive programme of disarmament*

The General Assembly, at its tenth special session, had decided to establish the Disarmament Commission as a deliberative body open to all States Members of the United Nations and to have it consider and recommend to the Assembly the elements of a comprehensive programme of disarmament.[14] By that decision the Assembly squarely placed the responsibility for accomplishing the first stage of the long-standing task of developing a comprehensive programme of disarmament with the new deliberative body and that for negotiating details with the Committee on Disarmament.

In 1979 the new deliberative body, the Disarmament Commission, was virtually fully occupied during its substantive session with its responsibilities in connexion with the comprehensive

[10] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 42* (A/34/42).

[11] *Ibid., Supplement No. 27* (A/34/27 and Corr.1).

[12] *Ibid., Thirty-fourth Session, Plenary Meetings*, 5th-32nd and 97th meetings; *ibid., Thirty-fourth Session, First Committee*, 4th-44th meetings; and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[13] See General Assembly resolutions 34/83 A to M of 11 December 1979, on disarmament and international security (A), on the report of the Committee on Disarmament (B), on implementation of the recommendations and decisions of the tenth special session (C), on the United Nations programme of fellowships on disarmament (D), on the monitoring of disarmament agreements and strengthening of international security (E), on the freezing and reduction of military budgets (F), on the non-use of nuclear weapons and prevention of nuclear war (G), on the report of the Disarmament Commission (H), on Disarmament Week (I), on nuclear weapons in all aspects (J), on study on the relationship between disarmament and development (K), on the Committee on Disarmament (L), and on the programme of research and studies on disarmament (M) respectively. Also connected with this question is Assembly decision 34/422 concerning the study on the question of a comprehensive nuclear test ban.

[14] See *Juridical Yearbook*, 1978, pp. 46-54.

programme of disarmament. To facilitate its task, the Commission had for guidance the Final Document of the special session reflecting the consensus position of the General Assembly, as well as information on a number of other proposals which was conveyed to the Commission so that it could take them into account.

In connexion with the programme, the Commission, in 1979, fulfilled its mandate by adopting by consensus the elements of a comprehensive programme of disarmament. It also recorded, in the context of its recommendations, the fact that in certain subject areas proposals were put forward on which consensus could not be reached.[15]

Most delegations participating in the debate on the report of the Disarmament Commission in the First Committee expressed gratification that the Commission had reached agreement on the elements of a comprehensive programme of disarmament. Many also considered that the Disarmament Commission had carried out successfully the mandate entrusted to it by the General Assembly in the Final Document of its tenth special session.[16]

By its resolution 34/83 H[17] the General Assembly, *inter alia*, endorsed the report of the Disarmament Commission and the recommendations contained therein on the elements of a comprehensive programme on disarmament and requested the Commission to continue its work in accordance with its mandate as set down in paragraph 118[18] of the Final Document of the Tenth Special Session as well as to continue with the aim of elaborating, within the framework and in accordance with the priorities established at the tenth special session, a general approach to negotiations on nuclear and conventional disarmament.

(iv) *Adoption of a declaration on international co-operation for disarmament*

On the basis of a proposal submitted by Czechoslovakia,[19] the Assembly decided to include on its agenda, for the first time, an item entitled "Adoption of a declaration on international co-operation for disarmament". By its resolution 34/88 of 11 December 1979, adopted by a vote of 116 votes to none, with 27 abstentions, the Assembly, *inter alia*, solemnly called upon all States actively to promote the development, strengthening and intensification of international co-operation designed to achieve the goals of disarmament as defined by the General Assembly at its tenth special session and urged all States to improve further the international climate required for the full implementation of the Final Document of the Tenth Special Session of the General Assembly, to accelerate the progress of the appropriate disarmament negotiations and to strive to achieve concrete measures of disarmament.

(v) *World Disarmament Conference*

In 1979 the *Ad Hoc* Committee on the World Disarmament Conference met again, pursuant to General Assembly resolution 33/69, and held two sessions. In its report to the General Assembly,[20] the *Ad Hoc* Committee noted that although the idea of a world disarmament conference had received wide support among the States Members of the United Nations, no consensus with respect to the convening of such a conference had yet been reached among the nuclear-weapon States, whose participation had been deemed essential by most States Members of the Organization. It added that the Assembly might wish to decide that, after its second special session devoted to disarmament, a world disarmament conference would take place as soon as the necessary consensus on its convening had been reached. The General Assembly, by resolution 34/81 of 11 December 1979,

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[15] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 42* (A/34/42), and A/CN.10/PV.10-22 and A/CN.10/PV.9-22/Corrigendum.

[16] *Ibid., Thirty-fourth Session, First Committee*, 4th-40th meetings, and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[17] Resolution 34/83 H of 11 December 1979, adopted without a vote.

[18] See *Juridical Yearbook*, 1978, p. 53.

[19] Letters dated 18 June and 12 September 1979 from Czechoslovakia adressed to the Secretary-General of the United Nations (A/34/141 and Add.1).

[20] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 28* (A/34/28).

adopted without a vote, *inter alia*, noted with satisfaction the latter part of the report of the *Ad Hoc* Committee quoted above and further renewed the mandate of the *Ad Hoc* Committee, requesting it to maintain close contact with the representatives of the States possessing nuclear weapons in order to remain currently informed of their attitudes, as well as with all other States.

(vi) *Consideration of the declaration of the 1980s as a disarmament decade*

In 1979, the General Assembly, pursuant to its resolution 33/62 of December 1978, included in its agenda the item entitled "Consideration of the declaration of the 1980s as a disarmament decade". In the general debate held both in the plenary meetings and in the First Committee,[21] there was a general atmosphere of disappointment that the purposes and objectives of the First Disarmament Decade had not been better realized. The Assembly, by resolution 34/75 of 11 December 1979, adopted without a vote, decided, *inter alia*, to declare the decade of the 1980s as the Second Disarmament Decade and directed the Disarmament Commission, at its substantive session of 1980, to prepare elements of a draft resolution entitled "Declaration of the 1980s as the Second Disarmament Decade" and to submit them to the General Assembly at its thirty-fifth session for consideration and adoption.

(*b*) Nuclear disarmament

(i) *Nuclear arms limitation and disarmament*

In 1979, the Disarmament Commission,[22] the Committee on Disarmament[23] and the General Assembly[24] attempted to work out an acceptable approach for the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session.

The deliberations revealed some progress towards achieving mutual agreement on adopting a comprehensive approach to a process of nuclear disarmament whose elements would be implemented in careful stages. A notable achievement was the agreement reached by the Disarmament Commission on the elements of the comprehensive programme. Divergent views persisted, however, on such questions as priorities, undiminished security at all stages, and the relationship between nuclear and conventional disarmament.

There was also some progress towards agreement that if nuclear disarmament was to be realized, it would have to be pursued in a global context through such bodies as the Committee on Disarmament. At the same time, it was accepted that bilateral and other negotiations outside of that body should continue, with the participants in such negotiations keeping the multilateral negotiating body informed. Both the desirability of the participation of all nuclear-weapon States in efforts to curb the nuclear arms race and the special responsibility of the two leading Powers were recognized. Agreement was not reached, however, on how best to revitalize the negotiating process. Among the reasons that no consensus was reached was disagreement as to how the negotiations should proceed and what they should cover as well as on the relationship between nuclear and conventional disarmament and the need for parallel progress on both.

The differences of viewpoints as to how best to proceed were evident also in the General Assembly, where the idea of dealing with nuclear weapons in all aspects was put forward and at the same time the established items concerning nuclear disarmament continued to receive concerted attention.

One factor that was agreed upon was that nuclear disarmament would enhance confidence among all States, particularly those not possessing nuclear weapons. In addition, there was full

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[21] *Ibid.*, *Thirty-fourth Session, Plenary Meetings*, 5th-32nd and 97th meetings; *ibid.*, *Thirty-fourth Session, First Committee*, 4th-37th meetings; and *ibid.*, *First Committee, Sessional Fascicle*, corrigendum.

[22] *Ibid.*, *Thirty-fourth Session, Supplement No. 42* (A/34/42).

[23] *Ibid.*, *Supplement No. 27* (A/34/27 and Corr.1).

[24] *Ibid.*, *Thirty-fourth Session, Plenary Meetings*, 5th-32nd and 97th meetings; *ibid*, *Thirty-fourth Session, First Committee*, 11th-44th meetings; and *ibid.*, *First Committee, Sessional Fascicle*, corrigendum.

agreement that political will was needed to curb the nuclear arms race and implement nuclear disarmament measures in the context of a comprehensive programme of disarmament.[25]

(ii) *Strategic arms limitation talks*

As in previous years, the SALT negotiations between the United States and the Soviet Union received particular attention in the General Assembly in 1979, both in plenary meetings and in the First Committee.[26] This time, however, the consideration of the issue was markedly influenced by the results achieved in the negotiations. By resolution 34/87 F, adopted without a vote on 11 December 1979, the General Assembly, *inter alia*, noted that it had not been possible for the Treaty on the Limitation of Strategic Offensive Arms (SALT II) to go beyond certain limitations which, taken together, permit considerable increments, both quantitatively and qualitatively, in relation to the levels of the nuclear arsenals existing at present; the Assembly also welcomed the agreement reached by both parties with a view to (*a*) continuing to pursue negotiations in accordance with the principle of equality and equal security, on measures for the further limitation and reduction in the number of strategic arms, as well as for their further qualitative limitation, and (*b*) endeavouring in such negotiations to achieve, *inter alia*, significant and substantial reductions in the numbers of strategic offensive arms as well as qualitative limitations on strategic offensive arms, including restrictions on the development, testing and deployment of new types of strategic offensive arms and on the modernization of existing strategic offensive arms.[27]

(iii) *Cessation of nuclear-weapons tests*

In 1979, for the first time, the General Assembly specifically requested the Committee on Disarmament to initiate negotiations on a treaty prohibiting all nuclear test explosions by all States for all time "as a matter of the highest priority".[28] Also for the first time it invited Governments to contribute to the development of co-operative measures to detect seismic events. At the same time the Assembly again called upon the three negotiating States to use their best endeavours to bring their negotiations to a positive conclusion.[29]

(iv) *Strengthening of the security of non-nuclear weapon States*

The discussion on the question of guarantees of the security of non-nuclear-weapon States during 1979 revealed continued and strong support of the majority of States for arrangements aimed at strengthening such guarantees. Some non-nuclear-weapon States continued to express doubts concerning the effectiveness of unilateral declarations on security measures given by nuclear-weapon States.[30]

The adoption by the General Assembly of three resolutions dealing with the consideration of the strengthening of guarantees of the security of non-nuclear-weapon States, including the possible conclusion of an international convention on the subject, indicates growing understanding among both nuclear and non-nuclear-weapon States on the need for further consideration of the question in order to reach agreement on suitable international arrangements for the stronger security guarantees which are being sought.

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[25] See General Assembly resolutions 34/83 G and 34/83 J, 34/87 C, 34/87 D and 34/89 D, of 11 December 1979.

[26] See *Official Records of the General Assembly, Thirty-fourth Session, Plenary Meetings*, 5th-32nd and 97th meetings; *ibid., Thirty-fourth Session, First Committee*, 4th-44th meetings; and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[27] See General Assembly resolution 34/87 F.

[28] See paragraph 4 of resolution 34/73 of 11 December 1979, adopted by a recorded vote of 124 to none, with 13 abstentions (the five nuclear-weapon States and the Eastern European States, except Romania).

[29] Resolution 34/73, adopted as a whole by a recorded vote of 137 to none, with 2 abstentions (China and France).

[30] See the report of the Disarmament Commission, *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 42* (A/34/42); the report of the Committee on Disarmament, *ibid., Supplement No. 27* (A/34/27 and Corr.1); *ibid., Thirty-fourth Session, Plenary Meetings*, 5th-32nd and 97th meetings; *ibid., First Committee*, 4th-44th meetings; and *ibid., First Committee, Sessional Fascicle*, corrigendum.

In those resolutions, the General Assembly, *inter alia*, requested the Committee on Disarmament to continue the negotiations on this subject on a priority basis during its 1980 session with a view to their early conclusion with the elaboration of a convention to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons;[31] the Assembly also recommended that the Committee on Disarmament should conclude effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons during its 1980 session.[32]

(v) *Nuclear-weapon-free zones*

The concept of nuclear-weapon-free zones and proposals for their establishment in various parts of the world continued in 1979 to receive support from the great majority of Member States. That support was clearly evidenced by the views expressed at various fora, including the Disarmament Commission and the Committee on Disarmament, as well as the General Assembly and its First Committee. The general belief is that the establishment of nuclear-weapon-free zones is a feasible and effective means of preventing the risk of further horizontal proliferation of nuclear weapons and of enhancing security of the countries concerned. However, certain differences in views still exist with respect to the application of the concept in some specific areas.[33]

During 1979, with regard to the Treaty of Tlatelolco, there were positive developments in that France signed Additional Protocol I and the Soviet Union ratified Additional Protocol II, thus providing further steps toward full implementation of the Treaty. In particular, with the Soviet action, all nuclear-weapon States became adherents to Additional Protocol II, thus fulfilling an aspiration of the General Assembly. By resolution 34/71 of 11 December 1979, adopted without a vote, the Assembly, *inter alia*, invited France and the United States of America to take all necessary steps in order to secure the ratification of Additional Protocol I at the earliest possible date.[34]

With regard to the denuclearization of Africa, although the desire for implementation of the Declaration continued, the States of the African region expressed serious concern about their security on the basis of reports that South Africa might have detonated a nuclear explosive device. The discussion led to the adoption of an additional resolution under the item and of a disarmament-related resolution on the question of nuclear collaboration with South Africa.[35] The proposal for a nuclear-weapon-free zone in the Middle East also continued to receive widespread support, and that objective was reaffirmed by the General Assembly.[36] With regard to the proposal of a nuclear-weapon-free zone in South Asia, the established differences in views among various States, particularly India and Pakistan, continued to exist although the General Assembly endorsed, in principle, the proposal.[37]

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[31] General Assembly resolution 34/84 of 11 December 1979, adopted by a vote of 114 to 1 (Albania), with 25 abstentions (including the United States and other Western States).

[32] General Assembly resolution 34/85 of 11 December 1979, adopted by a vote of 120 to none, with 22 abstentions (including France, India, Japan, the United Kingdom and the United States). See also General Assembly resolution 34/86 of 11 December 1979, adopted by a vote of 110 to 1 (Albania), with 29 abstentions (including the USSR and other Socialist and non-aligned States).

[33] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 42* (A/34/42); *ibid., Supplement No. 27* (A/34/27 and Corr.1); *ibid., Thirty-fourth Session, Plenary Meetings*, 5th-32nd and 97th meetings; *ibid., Thirty-fourth Session, First Committee*, 4th-43rd meetings; and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[34] See also resolution 34/74 of 11 December 1979, adopted without a vote.

[35] See General Assembly resolutions 34/76 A of 11 December 1979, adopted by a vote of 128 to none, with 11 abstentions (Belgium, Canada, France, Germany, Federal Republic of, Greece, Israel, Italy, Luxembourg, Netherlands, United Kingdom and United States), 34/76 B of 11 December 1979, adopted without a vote, and 34/93 E of 20 December 1979, adopted by a vote of 119 to 4 (France, Germany, Federal Republic of, United Kingdom and United States), with 18 abstentions.

[36] General Assembly resolution 34/77 of 11 December 1979, adopted by a vote of 136 to none, with 1 abstention (Israel).

[37] General Assembly resolution 34/78 of 11 December 1979, adopted by a vote of 96 to 2 (Bhutan and India), with 40 abstentions.

(c) Prohibition or restriction of use of other weapons

(i) *Chemical and bacteriological (biological) weapons*

During 1979 the urgency and importance of negotiating an international convention on chemical weapons was again repeatedly emphasized in various international disarmament fora,[38] that category of weapons being the principal one not yet subject to a régime of control. A draft agreement, which has been the subject of negotiations between the two major Powers for some time, was not put forward during the year. However, the joint statement of 31 July by the Soviet Union and the United States in the Committee on Disarmament on the status of their ongoing bilateral negotiations was one of the important developments of 1979, and as such was generally welcomed.

The General Assembly expressed regret that no agreement on those weapons had yet been elaborated and urged the Committee on Disarmament to undertake, at the beginning of its 1980 session, as a matter of high priority, negotiations on an agreement on the complete and effective prohibition of the development, production and stockpiling of all chemical weapons and on their destruction.[39]

With regard to bacteriological weapons, they did not figure prominently in the discussions in 1979, given the expectation that an opportunity would be provided for in-depth consideration of the subject at the 1980 Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.[40]

In the only resolution which referred to the subject, the General Assembly reaffirmed the necessity of strict observance by all States of the principles and objectives of the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous and Other Gases, and of Bacteriological Methods of Warfare, and the adherence by all States to the Convention on bacteriological (biological) and toxin weapons.[41]

(ii) *New weapons of mass destruction*

During the consideration of the question of the prohibition of the development and manufacture of new weapons of mass destruction and new systems of such weapons in 1979, particularly in the Committee on Disarmament and at the thirty-fourth session of the General Assembly, the necessity for action aimed at the banning of such weapons received wide recognition.[42]

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[38] See the report of the Disarmament Commission, *Thirty-fourth Session, Supplement No. 42* (A/34/42), in particular, para. 19, sect. III and para. 14.A.2; the report of the Committee on Disarmament, *ibid.*, *Supplement No. 27* (A/34/27 and Corr.1); *ibid.*, *Thirty-fourth Session, Plenary Meetings*, 5th-32nd and 97th meetings; *ibid.*, *Thirty-fourth Session, First Committee*, 4th-40th meetings; and *ibid.*, *First Committee, Sessional Fascicle*, corrigendum.

[39] General Assembly resolution 34/72 of 11 December 1979, adopted without a vote.

[40] Article XII of the Convention provides that:

> "Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a Conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realized. Such review shall take into account any new scientific and technological developments relevant to this Convention."

The Convention entered into force on 26 March 1975 after ratification by the twenty-second party, including the Governments designated as Depositaries of the Convention: the Soviet Union, the United Kingdom and the United States.

[41] General Assembly resolution 34/72 of 11 December 1979 on chemical weapons, adopted without a vote.

[42] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 42* (A/34/42), para. 19, sect. III, para. 14.A.2.(*b*); and A/CN.10/PV.10-17 and A/CN.10/PV.9-22/Corrigendum; *ibid.*, *Supplement No. 27* (A/34/27 and Corr.1), p. 17; *ibid.*, *Thirty-fourth Session, Plenary Meetings*, 5th-32nd and 97th meetings; *ibid.*, *Thirty-fourth Session, First Committee, 4th-41st meetings*; and *ibid, First Committee, Sessional Fascicle*, corrigendum.

The two established approaches on the subject still remained, however, and even became more distinct from one another. The Soviet Union, other Eastern European States and some non-aligned countries continued to call for the conclusion of a general comprehensive agreement prohibiting the development and manufacture of new types of weapons of mass destruction and new systems of such weapons, and to accept the concept of specific agreements when appropriate.

The Western States continued to oppose a general agreement and to support the idea of keeping the question under review and dealing with the conclusion of separate conventions on specific new types of weapons of mass destruction as and when such weapons could be identified.

The General Assembly, *inter alia*, requested the Committee on Disarmament, in the light of its existing priorities, actively to continue negotiations, with the assistance of qualified governmental experts, with a view to preparing a draft comprehensive agreement on the prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons and, where necessary, specific agreements on particular types of such weapons.[43]

(iii) *Radiological weapons*

In 1979 in the Disarmament Commission few comments were made on the specific question of radiological weapons. Speakers who referred to it did so in the context of including radiological weapons among the measures which they felt must be dealt with in any comprehensive programme of disarmament. The Commission, in its recommendations relating to the elements of a comprehensive programme of disarmament, included a measure entitled "Prohibition of the development, production and use of radiological weapons" under the heading "Other weapons of mass destruction".[44]

At the beginning of the consideration of this question in the Committee on Disarmament, the Soviet Union and the United States submitted an agreed joint proposal on major elements of a treaty prohibiting the development, production, stockpiling and use of radiological weapons.[45]

The above-mentioned proposal was generally welcomed in the General Assembly.[46] The Assembly adopted a resolution[47] whereby, *inter alia*, it welcomed the report of the Committee on Disarmament with regard to radiological weapons and, particularly, its stated intention to continue consideration of proposals for a convention banning these weapons at its next session; it also requested the Committee on Disarmament to proceed as soon as possible to achieve agreement, through negotiation, on the text of such a convention and to report to the General Assembly on the results achieved for consideration by the Assembly at its thirty-fifth session.

(iv) *Treaty on the Non-Proliferation of Nuclear Weapons*

In 1979, preparations for the Second Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons began and increased attention focused on the Conference to be held in August 1980. It was apparent that, as in the case of the first Review Conference, the task of reviewing the operation of the Treaty to assure that its various provisions were being implemented would be approached from differing perspectives. In the view of a number of States, including the three nuclear-weapon States and other Eastern European and Western States parties to the Treaty, the task ahead would be to make use of the opportunity to strengthen the Treaty and to avert the danger of further proliferation of nuclear weapons. On the other hand, many non-nuclear-weapon States parties, while agreeing to the need to strengthen the Treaty and encourage universal adherence,

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[43] General Assembly resolution 34/79 of 11 December 1979, adopted by a vote of 117 to none, with 24 abstentions, mainly Western States. China did not participate in the vote.

[44] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 42* (A/34/42), particularly para. 19, sect. III, para. 14.A.2(*e*).

[45] *Ibid., Supplement No. 27* (A/34/27 and Corr.1), para. 57 and appendix IV, vols. I-III and, particularly, appendix III, vol. II, documents CD/31 and CD/32.

[46] *Ibid., Thirty-fourth Session, Plenary Meetings*, 5th-32nd and 97th meetings; *ibid., First Committee*, 4th-36th meetings; and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[47] Resolution 34/87 A of 11 December 1979, adopted without a vote.

viewed the primary question as establishing a mutually satisfactory balance between the rights and obligations of the nuclear and non-nuclear-weapon States. They emphasized the need for cessation of the nuclear arms race and nuclear disarmament, the question of security assurances to non-nuclear-weapon States, and international co-operation in the development of peaceful uses of nuclear energy. In connexion with the last-mentioned consideration, the same States emphasized the need to ensure that measures adopted to minimize the risks of weapon proliferation associated with the development of the use of nuclear energy for peaceful purposes do not prejudice the right of all States to benefit from peaceful applications of nuclear energy without discrimination.

The discussions on non-proliferation and the non-proliferation Treaty revealed broad support for the Treaty as the central element of the international régime to prevent the proliferation of nuclear weapons.[48]

The General Assembly adopted several resolutions directly related to the question of non-proliferation of nuclear weapons, but no specific resolution on the topic. By one resolution[49] on the non-stationing of nuclear weapons in the territory of other States, the General Assembly expressed the belief that it was necessary to examine possibilities for an international agreement on non-stationing of nuclear weapons on the territories of States where there were no such weapons at present. By another resolution,[50] the General Assembly requested the Committee on Disarmament, at an appropriate stage of its work on the agenda item entitled "Nuclear weapons in all aspects", to pursue its consideration of the question of adequately verified cessation and prohibition of the production of fissionable material for nuclear weapons and other explosive devices and to keep the General Assembly informed of the progress of that consideration. Several resolutions were adopted on the question of nuclear-weapon-free zones.[51] The General Assembly also adopted a resolution on the nuclear capability of South Africa and another on nuclear collaboration with South Africa.[52] Finally, by a resolution on Israeli nuclear armament, the General Assembly, *inter alia*, requested the Secretary-General, with the assistance of qualified experts, to prepare a study on the question.[53]

2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Development and strengthening of good neighbourliness between States

By its resolution 34/99 which it adopted on the recommendation of the First Committee,[54] the General Assembly *inter alia* stressed that the great changes of a political, economic and social nature as well as the scientific and technological progress which had taken place in the world and led to unprecedented interdependence of nations had given new dimensions to good neighbourliness and increased the need to ensure its further development and its more effective implementation in the

[48] For the decisions of the first and second sessions of the Preparatory Committee for the Second Review Conference held, respectively, from 17 to 23 April and from 20 to 24 August 1979 in Geneva (see documents NPT/CONF.II/PC.I/3 and NPT/CONF.II/PC.II/12). For the discussion in the General Assembly, see *Official Records of the General Assembly, Thirty-fourth Session, Plenary Meetings*, 5th-32nd and 97th meetings; *ibid., Thirty-fourth Session, First Committee*, 4th-44th meetings, and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[49] General Assembly resolution 34/87 C of 11 December 1979, adopted by a recorded vote of 99 to 18, with 19 abstentions.

[50] General Assembly resolution 34/87 D of 11 December 1979, adopted by a recorded vote of 118 to 9, with 12 abstentions.

[51] See subheading (v) above.

[52] Respectively, resolutions 34/76 B of 11 December 1979, adopted without a vote, and 34/93 E of 12 December 1979, adopted by a recorded vote of 119 to 4, with 18 abstentions.

[53] Resolution 34/89 of 11 December 1979, adopted by a recorded vote of 97 to 10, with 38 abstentions.

[54] See the report of the First Committee to the thirty-fourth session of the General Assembly on agenda item 46 (A/34/827).

conduct of States in all fields, and expressed its conviction that the development and strengthening of good neighbourliness were likely to contribute to the solution of problems between States, particularly neighbouring ones, which endangered the peace, security and progress of States. Considering that the generalization of the long practice and certain norms of good neighbourliness was likely to strengthen friendly relations and co-operation among States in accordance with the Charter, the Assembly called upon all States to promote good neighbourliness in their relations with other States and affirmed that good neighbourliness conformed with the purposes of the United Nations and was founded upon the strict observance of the principles of the Charter and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as well as the rejection of any acts seeking to establish zones of influence and domination.

(*b*) Implementation of the Declaration on the Strengthening of International Security[55]

By its resolution 34/100 which it adopted on the recommendation of the First Committee,[56] the General Assembly *inter alia* called upon all States to contribute effectively to the implementation and further elaboration of the provisions of the Declaration on the Strengthening of International Security; urged with emphasis all the members of the Security Council, especially the permanent members, to consider and to take, as a matter of urgency, all the necessary measures for ensuring respect for the provisions of the Charter of the United Nations in the effective implementation of the decisions of the Council on the maintenance of international peace and security, including, particularly, those envisaged in Chapter VII of the Charter and provided for in the Declaration, by strengthening the confidence of States in the United Nations and in the effectiveness of the Council, as the organ bearing primary responsibility for the maintenance of international peace and security; further called upon all States to adhere fully to the purposes and principles of the Charter and to observe strictly, in international relations, the principles of national independence, sovereignty, territorial integrity, sovereign equality, non-intervention and non-interference in the internal or external affairs of other States, the right of all States and peoples to determine their political systems and pursue economic, social and cultural development without intimidation, hindrance or pressure, sovereignty over natural resources, inviolability of international frontiers, non-use of force or threat of force and non-recognition of situations brought about by the threat or use of force, and the principle of peaceful settlement of disputes; reaffirmed again its opposition to any threat or use of force, intervention and interference, aggression, foreign occupation or measures of political and economic coercion which attempt to violate the sovereignty, territorial integrity, independence and security of States or their right freely to dispose of their natural resources; invited all States to reject any support for or encouragement of any form of intervention or interference in the internal or external affairs of States for any reason whatsoever and to refuse recognition of situations brought about by the threat or use of force; called upon all States to refrain from any act which might hinder the continuation of the process of relaxation of international tension, impede the resolution of the focal points of crisis and tension in various regions of the world, hamper the implementation of the recommendation of the General Assembly at its tenth special session on effective measures for halting the arms race, particularly the nuclear arms race, and for disarmament, and postpone the implementation of the new international economic order; reaffirmed again the legitimacy of the struggle of peoples under colonial and alien domination or occupation to achieve self-determination and independence, and urged Member States to increase their support for and solidarity with them and their national liberation movements and to take urgent and effective measures for the speedy completion of the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples[57] and other resolutions of the United Nations on the final elimination of colonialism, racism and *apartheid*; recognized the advance that had been made in the struggle of

[55] General Assembly resolution 2734 (XXV). Reproduced in the *Juridical Yearbook*, 1970, p. 62.

[56] See the report of the First Committee to the thirty-fourth session of the General Assembly on agenda item 46 (A/34/827).

[57] General Assembly resolution 1514 (XV).

oppressed peoples for their emancipation and the elimination of colonialism, neo-colonialism, racism in all its manifestations, racial discrimination, *apartheid*, alien domination and occupation; and considered that the implementation of the new international economic order, assuring, through the settlement of urgent international economic problems, a speedy development of the developing countries, particularly the least developed ones, would contribute to the strengthening of international peace and security and to the promotion of economic co-operation for development as an important prerequisite of peaceful and active coexistence among States and requested all States, particularly the developed ones, to participate actively in the efforts of the United Nations and in the global negotiations to that end.

(*c*) Non-interference in the internal affairs of States

By its resolution 34/101 which it adopted on the recommendation of the First Committee,[58] the General Assembly *inter alia* reaffirmed that a declaration on non-interference in the internal affairs of States would be an important contribution to the further elaboration of the principles for strengthening equitable co-operation and friendly relations among States, based on sovereign equality and mutual respect, took note of the draft declaration on the inadmissibility of intervention and interference in internal affairs of States[59] and decided to set up an open-ended *ad hoc* working group of the First Committee at the commencement of the thirty-fifth session with a view to elaborating and finalizing the declaration.

(*d*) Settlement by peaceful means of disputes between States

By its resolution 34/102, adopted on the recommendation of the First Committee,[60] the General Assembly, *inter alia* recalled that, under the Charter of the United Nations, the Member States had expressed the determination of their peoples to practice tolerance and live together in peace with one another as good neighbours and to unite their strength to maintain international peace and security; it further called upon all States to adhere strictly in their international relations to the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered and urged all States to co-operate in the elaboration of a declaration on the peaceful settlement of disputes between States.

(*e*) Inadmissibility of the policy of hegemonism in international relations

By its resolution 34/103, adopted on the recommendation of the First Committee,[61] the General Assembly *inter alia* condemned hegemonism in all its manifestations, including that conducted at the global, regional or sub-regional level, pursued in the context of the policy of division of the world into blocs or by individual States; called upon all States, in the conduct of international relations, to observe strictly the principles of the Charter of the United Nations and those regarding respect for the sovereignty, sovereign equality, national independence, unity and territorial integrity of States, non-interference in their international affairs, non-aggression, peaceful settlement of disputes and co-operation, as well as the right of peoples under colonial and alien domination to self-determination; and further called for strict respect for the right of all States to determine their political and socio-economic systems and pursue their national economic, social and other policies without intimidation, hindrance or interference from outside.

[58] See the report of the First Committee to the thirty-fourth session of the General Assembly on agenda item 46 (A/34/827).

[59] *Ibid.*, para. 9.

[60] See the report of the First Committee to the thirty-fourth session of the General Assembly on agenda item 122 (A/34/790).

[61] See the report of the First Committee to the thirty-fourth session of the General Assembly on agenda item 126 (A/34/791).

(f) Legal aspects of the peaceful uses of outer space

The Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space held its eighteenth session at United Nations Headquarters from 12 March to 6 April 1979.[62]

The report of the Legal Sub-Committee was considered by the Committee on the Peaceful Uses of Outer Space at its twenty-first session, held at United Nations Headquarters from 18 June to 3 July 1979.[63] On the question of remote sensing of the earth by satellites, the Committee noted that the Legal Sub-Committee had through its Working Group III carried out a principle by principle reading of the draft principles formulated by the Working Group to date. The Committee noted however that several key issues remained to be agreed upon before the draft principles could be finalized. It recommended that the Legal Sub-Committee should continue, on the basis of priority, to give detailed consideration to the legal implications of remote sensing of the earth from space, with the aim of formulating draft principles relating to remote sensing.

With regard to direct television broadcasting by satellites, the Committee noted that the Legal Sub-Committee had given priority consideration to the elaboration of draft principles governing the use by States of artificial earth satellites for direct television broadcasting. The Committee noted that the Sub-Committee, through its Working Group II, had carried out a principle by principle reading of the draft principles formulated thus far, but had once more been unable to finalize the text. It recommended that the Legal Sub-Committee at its next session continue, as a matter of priority, its efforts to consider the elaboration of principles governing the use by States of artificial earth satellites for direct television broadcasting in accordance with, *inter alia*, General Assembly resolution 33/16.

Regarding the definition and/or delimination of outer space activities bearing in mind, *inter alia* questions relating to the geo-stationary orbit, the Committee noted that the report of the Legal Sub-Committee reflected a variety of views.[64] It noted in particular the proposal of the Soviet Union with regard to the establishment of a conventional boundary for air space and outer space not higher than 100 to 110 kilometers above sea level. Within the Committee this proposal was supported by some delegations but gave rise to reservations on the part of others; on the question of geo-stationary orbit, some delegations from equatorial countries expressed the view that they had sovereign rights over the segment of the geo-stationary orbit above their territories; other delegations stressed the need for establishing a special regime to govern the utilization of the geo-stationary orbit while some others took the contrary view and still others held that the provisions of the outer space treaty were applicable to the geo-stationary orbit.

On space transportation systems, the view was expressed within the Committee that it would be necessary to elaborate legal principles on the use of space transportation systems bearing in mind, *inter alia*, the prohibition of removal from orbit of space objects from foreign States without their prior consent, as well as the elaboration of rules of passage of such systems above the territories of foreign States after the first stage of launching.

With respect to the question of the use of nuclear power sources in outer space, the Committee recommended that the Legal Sub-Committee should include in its agenda an item entitled "Review of existing international law relevant to outer space activities with a view to determining the appropriateness of supplementing such law with provisions relating to the uses of nuclear power sources in outer space".

Regarding the draft treaty relating to the moon, the Committee noted that in its efforts to complete work in this connexion, Working Group I of the Legal Sub-Committee had based its discussions on a compromise text proposed by Austria. Through an informal Working Group of the Whole, the Committee finalized the work carried out within the Legal Sub-Committee on the basis of this compromise text and submitted to the General Assembly at its thirty-fourth session, for

[62] For the report of the Legal Sub-Committee, see document A/AC.105/240.

[63] For the report of the Committee see *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 20* (A/34/20).

[64] See A/AC.105/240, paras. 39-47.

consideration, final adoption and signature, the draft agreement governing the activities of States on the moon and other celestial bodies.

At its thirty-fourth session, the General Assembly adopted, on the recommendation of the Special Political Committee,[65] resolution 34/66 in which it *inter alia* invited States which had not yet become parties to the international treaties governing the uses of outer space to give consideration to ratifying or acceding to those treaties and endorsed the recommendations of the Committee concerning the future work of its Legal Sub-Committee. The General Assembly also adopted, on the recommendation of the Special Political Committee, resolution 34/68 by which it *inter alia* commended the Agreement Governing the Activities of States on the Moon and other Celestial Bodies annexed to the resolution[66] and expressed its hope for the widest possible adherence to this Agreement.[67]

3. ECONOMIC, SOCIAL AND HUMANITARIAN QUESTIONS

(*a*) Economic questions

(1) *Co-operation in the field of the environment concerning national resources shared by one or more States*

By its resolution 34/186 adopted on the recommendation of the Second Committee,[68] the General Assembly *inter alia* recalled the relevant provisions of its resolution 3201 (S-VI)[69] and 3202 (S-VI) of 1 May 1974, in which it reaffirmed the principle of full permanent sovereignty of every State over its natural resources and the responsibility of States as set out in the Declaration of the United Nations Conference on the Human Environment[70] to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States and to co-operate in developing the international law regarding liability and compensation for such damages; and took note of the draft principles elaborated by an Intergovernmental Working Group of Experts[71] as guidelines and recommendations in the conservation and harmonious utilization of natural resources shared by two or more States, on the basis of the principle of good faith and in the spirit of good neighbourliness and in such a way as to enhance and not adversely affect development and the interests of all countries, in particular the developing countries.

(2) *Code of conduct on the transfer of technology*

In accordance with General Assembly resolution 33/157, the Conference convened to negotiate on the draft of an international code of conduct on the transfer of technology[72] elaborated by an intergovernmental group of experts within the United Nations Conference on Trade and Development held its second session from 26 February to 9 March 1979. At that session however, no agreement was achieved on a number of fundamental issues of interest to the developing countries.[73]

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[65] See the report of the Special Political Committee to the thirty-fourth session of the General Assembly on agenda items 55 and 56 (A/34/664).

[66] For the text of the Agreement see ch. IV (1) of this *Yearbook*.

[67] See footnote 65 above.

[68] See the report of the Second Committee to the thirty-fourth session of the General Assembly on agenda item 60 (A/34/837).

[69] See *Juridical Yearbook*, 1974, p. 52.

[70] Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972 (United Nations publication, Sales No.: E.73.II.A.14 and corrigendum), Chap. I.

[71] UNEP/GC.6/17.

[72] TD/CODE TOT/1.

[73] For information on the results of the first and second sessions of the Conference held in 1978 and 1979 respectively see document TD/237 and Add.1.

By its resolution 34/195 adopted on the recommendation of the Second Committee,[74] the General Assembly decided to convene a third session of the Conference and called for the necessary political will and flexibility to complete negotiations and take all decisions necessary for the adoption of the code of conduct, bearing in mind the interests and concerns of developing countries.

(*b*) Environmental questions

Seventh session of the Governing Council of the United Nations Environment Programme[75]

During its seventh session which was held from 18 April to 4 May 1979, the Governing Council *inter alia* discussed questions related to environmental law. It had before it in this connexion the report of the Executive Director on environmental law[76] in which it was indicated *inter alia* that a master copy comprising full texts of the International Environmental Convention and protocols listed on UNEP/GC/INFORMATION/5 and its supplement had been prepared and that a survey of selected universities and research institutes in the various regions had identified those which teach or research, or are capable of teaching or conducting research in environmental law. The report further indicated that the Working Group of Experts on Environmental Law established by the Governing Council in 1977 had held its third session in Geneva from 5 to 14 March 1979. At its first session held in 1977, the Working Group had decided that its first study should relate to the legal aspects of offshore mining and drilling carried out within the limits of national jurisdiction and at its second session held in 1978 it had drawn up a comprehensive programme for pursuing its work in this area. At its third session, the Working Group commenced the study and development of legal conclusions on Part I of the above programme of work; it established its legal conclusions capable of being converted into legal guidelines under the heading "General provisions", "Authorization system", "Assessment of the impact on environment", "Appropriate environmental monitoring systems", "Consideration of transfrontier environmental impact when authorizing offshore mining or drilling, in particular (*a*) notification and (*b*) consultation".[77]

The Governing Council also had before it a report of the Executive Director on International Conventions and Protocols in the Field of the Environment.[78] The report provided among others a list of instruments in the field of the environment which had recently entered into force or been concluded,[79] as well as a list of draft agreements which were at various stages of preparation or negotiation, including for example the draft European convention for the protection of international watercourses against pollution, the draft convention for the protection of the marine environment of the Red Sea and Gulf of Aden, the draft revision of the text of the International Convention for the Regulation of Whaling, 1946 and the draft convention on the conservation of Antarctic Marine Living Resources.

Action by the General Assembly

Aside from resolution 34/186 on the question of co-operation in the field of the environment concerning natural resources shared by two or more States which has been dealt with in subsection 3(*a*)(1) above, the General Assembly at its thirty-fourth session passed another resolution

[74] See the report of the Second Committee to the thirty-fourth session of the General Assembly on agenda item 56 (A/34/538/Add.1).

[75] For detailed information see *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 25* (A/34/25).

[76] UNEP/GC.7/7/Add.1, Chapter IV A.

[77] For the report of the Working Group, see document JNEP/WG.24/3.

[78] UNEP/GC.7/8.

[79] More up to date information on existing international instruments in the field of environment was circulated on 27 January 1981 in document UNEP/GC/INFORMATION/5/Supplement 4. Among relevant multilateral conventions which were concluded in 1979 that document mentions the Convention on the Conservation of Migratory Species of Wild Animals and the Convention on Long-Range Transboundary Air Pollution which was adopted in 1979 within the framework of the Economic Commission for Europe.

of legal interest in the field of environment, namely resolution 34/183 which it adopted on the recommendation of the Second Committee[80] in which it *inter alia* recalled that IMCO had adopted a number of comprehensive international conventions, recommendations, traffic separation schemes and codes of practice specifically for the purpose of enhancing maritime safety, ensuring efficiency of navigation and protecting the marine environment, that significant progress had been achieved at the Third United Nations Conference on the Law of the Sea with regard to the protection and preservation of the marine environment and that work had been done by the ILO and IMCO concerning training and certification for seafarers, notably the ILO Convention concerning Minimum Standards in Merchant Ships.[81] The Assembly called upon States parties to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954,[82] to discharge fully their obligations under the Convention and, in particular, those contained in article VI of that Convention,[83] and urged all States which had not already done so to examine the possibility of ratifying at the earliest opportunity the international conventions and protocols designed to ensure better protection of the marine environment, to improve the safety of navigation and to guarantee the training and competence of crews.

(*c*) Office of the United Nations High Commissioner for Refugees[84]

The essential significance of the international protective function was underscored in the various refugee situations which either arose or continued during 1979. One problem which assumed overriding importance was that of asylum, an area in which 1979 was marked by a series of developments giving rise to most profound concern. These related in particular to the difficulties faced by asylum seekers arriving by land or by sea in securing asylum even on a temporary basis: overland arrivals were either rejected at the frontiers or subjected to measures of *refoulement* on a large scale while arrivals by boat were turned away, sometimes in unseaworthy craft, to face the dangers of the high seas. That question was given detailed consideration by the Executive Committee of the High Commissioner's Programme which *inter alia* stressed that in situations involving a large scale influx, asylum seekers should receive at least temporary refuge, and also devoted special attention to the difficulties facing individual asylum seekers and particularly to the problems of the identification, on the basis of common criteria, of the country responsible for examining an asylum request.

The question of rescue at sea was examined *inter alia* by a Meeting of Experts on Rescue Operations for Refugees and Displaced Persons in Distress in the South China Seas, which was convened in August 1979 and in which a representative of IMCO participated. An important development was the adoption in April 1979 of the Convention on Maritime Search and Rescue. The technical annex to this Convention imposes an obligation on States parties to ensure that assistance is provided to any person in distress at sea, regardless of the nationality or status of such a person, or the circumstances in which the person is found.

The principle of *non-refoulement*, which is the most important single element in the protection of refugees and which has found expression in various international instruments was unfortunately

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[80] See the report of the Second Committee to the thirty-fourth session of the General Assembly on agenda item 60 (A/34/837).

[81] International Labour Office, *Official Bulletin*, vol. LX, 1977, Series A, No. 1, Convention No. 147.

[82] United Nations, *Treaty Series*, vol. 327, p. 4.

[83] Article VI of the Convention reads as follows:

"*Article VI*

"The penalties which may be imposed in pursuance of Article III under the law of any of the territories of a Contracting Government in respect of the unlawful discharge from a ship of oil or of an oily mixture into waters outside the territorial waters of that territory shall not be less than the penalties which may be imposed under the law of that territory in respect of the unlawful discharge of oil or of an oily mixture from a ship into such territorial waters."

[84] For detailed information, see *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 12 and 12A* (A/34/12 and Add.1) and *ibid., Thirty-fifth Session, Supplement No. 12 and 12A* (A/35/12 and Add.1).

disregarded in different areas during 1979. The High Commissioner was in some cases able to approach the authorities of the country concerned with a view to preventing *refoulement*. In other cases where the measure of *refoulement* was brought to his attention only after the event, he registered his serious concern.

With respect to expulsion, it is to be recalled that article 32 of the Convention relating to the Status of Refugees makes it clear that expulsion should only be resorted to in exceptional circumstances, i.e. when factors of national security or public order are involved. It appears that the number of cases in which refugees have been subjected to expulsion measures in circumstances not justified by article 32 has decreased in comparison with previous years.

Problems related to the physical protection of refugees have arisen in particular in South East Asia where asylum seekers in boats were the victims of private attacks. The High Commissioner has brought the problem of piracy specifically to the attention of the Secretary-General with a view to it being given consideration by the United Nations.

In regard to the question of detention and imprisonment of refugees, a positive contribution was made by the Pan African Conference on the Situation of Refugees in Africa which met at Arusha, United Republic of Tanzania, in May 1979.[85] The Conference reaffirmed a number of fundamental principles concerning the treatment of refugees and asylum seekers and its recommendations — which were approved by the Assembly of Heads of State and Government of the OAU held at Monrovia in July 1979 — will undoubtedly represent a major contribution towards improving the legal situation of refugees in Africa. It expressed concern in particular at the fact that detention and imprisonment were in many cases not subject to ordinary administrative or judicial remedies and recommended that such practices be discouraged.

Other areas in which the High Commissioner has continued his efforts on behalf of refugees include the enjoyment of economic and social rights, the issuance of travel and identity documents, the acquisition of a new nationality, the determination of refugee status, voluntary repatriation and family reunification.

As far as relevant international instruments are concerned, it should be noted that in recent years, the Statute of the High Commissioner's Office has assumed increasing practical importance because, being contained in a resolution of the General Assembly, it applies in respect of all States and provides a basis for UNHCR actions to protect refugees, irrespective of whether or not the State in which a refugee problem arises is a party to the 1951 Convention on the Status of Refugees[86] or to the 1967 Protocol thereto[87] or is a State which maintains the geographical limitations in respect of its obligations under these instruments. While there was no new accession in 1979 to the 1951 Convention, or to the 1967 Protocol, the UNHCR continued to keep in contact with Governments of States parties with regard to various aspects of implementation. In 1979, eight further States ratified the Protocols Additional to the Geneva Conventions of 1949. Another important development was the adoption by the General Assembly of the International Convention against the Taking of Hostages,[88] article 9 of which has relevance to the question of refugees. Finally there was in 1979 one further accession to the OAU Convention of 1969 governing the Specific Aspects of Refugee Problems in Africa, bringing the total number of States parties to the OAU Convention to 19.

By its resolution 34/60, adopted on the recommendation of the Third Committee,[89] the General Assembly *inter alia* urged Governments to intensify their support for the humanitarian activities of the High Commissioner by facilitating the accomplishment of his tasks in the field of international protection, considering accession to relevant international instruments and facilitating his efforts to promote durable solutions through voluntary repatriation or return and assistance in the

[85] See Report of the Conference on the Situation of Refugees in Africa, Arusha, United Republic of Tanzania, 7-17 May 1979 (REF/AR/CONF/Rpt.1), abridged version issued as A/AC.96/INF.158.

[86] United Nations, *Treaty Series*, vol. 189, p. 137.

[87] *Ibid.*, vol. 606, p. 267. Reproduced in the *Juridical Yearbook*, 1967, p. 285.

[88] Reproduced on p. 124 of this *Yearbook*.

[89] See the report of the Third Committee to the thirty-fourth session of the General Assembly on agenda item 83 (A/34/724).

rehabilitation of persons returning to their countries, integration in countries of asylum or resettlement in other countries.

(*d*) International drug control

In the course of 1979, additional States became parties to the Single Convention on Narcotic Drugs, 1961,[90] to the 1971 Convention on Psychotropic Substances,[91] to the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,[92] and to the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961.[93, 94]

The Commission on Narcotic Drugs at its twenty-eighth session held in February 1979 took a number of decisions on the scope of control of the above mentioned instruments and on various other questions.[95]

At its thirty-fourth session, the General Assembly, by its resolution 34/177 adopted on the recommendation of the Third Committee,[96] *inter alia* urged States which had not yet become parties to the international drug control treaties to adhere to them and to make maximum efforts to implement them.

(*e*) Crime prevention and criminal justice

(1) *Code of Conduct for Law Enforcement Officials*

By its resolution 34/169 adopted on the recommendation of the Third Committee,[97] the General Assembly adopted a Code of Conduct for Law Enforcement Officials and decided to transmit it to Governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials. The text of the Code is as follows:[98]

"*Article 1*

"Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

"*Article 2*

"In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

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[90] United Nations, *Treaty Series*, Vol. 520, p. 151.

[91] United Nations publication, Sales No.: E.78.XI.3, p. 7.

[92] E/CONF.63/9.

[93] United Nations publication, Sales No.: E.77.XI.3, p. 13.

[94] For a list of the States parties to these instruments as of 31 December 1979, see *Multilateral Treaties in respect of which the Secretary-General performs depository functions* (United Nations publication, Sales No.: E.80.V.10).

[95] See *Official Records of the Economic and Social Council, Official Records, 1979, Supplement No. 5* (E/1979/35).

[96] See the Report of the Third Committee to the thirty-fourth session of the General Assembly on agenda item 12 (A/34/827).

[97] See the report of the Third Committee to the thirty-fourth session of the General Assembly on agenda item 88 (A/34/783).

[98] The commentaries which have been appended to each article in order to provide information to facilitate the use of the Code within the framework of national legislation or practice are not reproduced here. For the text of those commentaries see General Assembly resolution 34/169.

"*Article 3*

"Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

"*Article 4*

"Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

"*Article 5*

"No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

"*Article 6*

"Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

"*Article 7*

"Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

"*Article 8*

"Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violation of them.

"Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power."

(2) *Draft Code of Medical Ethics*

In the report submitted by the World Health Organization to the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[99] it was suggested that a "Health Charter for Prisoners" might be elaborated with the co-operation of the World Health Organization. Furthermore in several successive resolutions the General Assembly invited WHO to prepare a draft code of medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment. At its thirty-fourth session, the General Assembly had before it a report of WHO[100] containing in an annex a draft Code of Medical Ethics. By its resolution 34/168, adopted on the recommendation of the Third Committee,[101] the General Assembly requested the Secretary-General to circulate this draft Code to Member States and various intergovernmental and non-governmental organizations.

[99] A/CONF.56/9.

[100] A/34/273.

[101] See the report of the Third Committee to the thirty-fourth session of the General Assembly on agenda item 88 (A/34/783).

(f) Human rights questions

(1) *Status and implementation of international instruments*

(i) *International Covenants on Human Rights*[102]

In 1979, five more States became parties to the International Covenant on Economic, Social and Cultural Rights, six more States became parties to the International Covenant on Civil and Political Rights and one more State became party to the Optional Protocol to the International Covenant on Civil and Political Rights. Article 41 of the International Covenant on Civil and Political Rights entered into force on 28 March 1979, in accordance with its paragraph 2.[103]

By its resolution 34/45, adopted on the recommendation of the Third Committee,[104] the General Assembly *inter alia* noted with appreciation the report of the Human Rights Committee on its sixth and seventh sessions,[105] invited all States which had not yet done so to become parties to the Covenants and to consider acceding to the Optional Protocol, appreciated that the Human Rights Committee continued to strive for uniform standards in the implementation of the International Covenant on Civil and Political Rights and of the Optional Protocol thereto and emphasized the importance of the strictest compliance by States parties with their obligations under the Covenant.

(ii) *International Convention on the Elimination of All Forms of Racial Discrimination*[106]

In 1979, four more States became parties to the Convention. In its resolution 34/25 adopted on the recommendation of the Third Committee,[107] the General Assembly *inter alia* reaffirmed its conviction that ratification of or accession to the Convention on a universal basis and implementation of its provisions are necessary for the realization of the objectives of the Decade for Action to Combat Racism and Racial Discrimination and requested States which had not yet become parties to the Convention to ratify it or accede thereto.

The General Assembly further adopted, also on the recommendation of the Third Committee, resolution 34/28 relating to the report of the Committee on the Elimination of Racial Discrimination in which it *inter alia* took note of the report of the Committee on its nineteenth and twentieth sessions,[108] called upon the States parties to observe fully the provisions of the Convention on the Elimination of All Forms of Racial Discrimination and other international instruments and agreements to which they are parties concerning the elimination of all forms of racial discrimination, and to take effective measures for securing full equality and promotion and protection of the rights of every person, group of persons or national or ethnic minority, as well as full protection of the rights of migrant workers, by preventing all practices of racial discrimination;

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[102] See General Assembly resolution 2200 A (XXI), annex. Also reproduced in the *Juridical Yearbook*, 1966, p. 170 *et seq.*

[103] Article 41 reads in part as follows:

"1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant ...

"2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration."

[104] See the report of the Third Committee to the thirty-fourth session of the General Assembly on agenda item 84 (A/34/687).

[105] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 40* (A/34/40).

[106] See General Assembly resolution 2106 A (XX). Also reproduced in the *Juridical Yearbook*, 1965, p. 65.

[107] See the report of the Third Committee to the thirty-fourth session of the General Assembly on agenda item 86 (A/34/597).

[108] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 18* (A/34/18).

and urged all States not parties to the Convention to ratify or to accede to it and, pending such ratification or accession, to be guided by the basic provisions of the Convention in their internal and foreign policies.

(iii) *International Convention on the Suppression and Punishment of the Crime of* Apartheid[109]

In 1979, four more States became parties to the Convention. In its resolution 34/27, adopted on the recommendation of the Third Committee,[110] the General Assembly *inter alia* appealed to all States which had not yet become parties to the Convention to ratify it or accede to it without delay and called upon States parties to implement fully article IV of the Convention by adopting legislative, judicial and administrative measures to prosecute, bring to trial and punish in accordance with their jurisdiction persons responsible for, or accused of, the acts defined in article II of the Convention.

(2) *Alternative approaches and ways and means within the United Nations system for the improvement of the effective enjoyment of human rights and fundamental freedoms*

By its resolution 34/46, adopted on the recommendation of the Third Committee,[111] the General Assembly *inter alia* reiterated its profound conviction that all human rights and fundamental freedoms are indivisible and interdependent, and that equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights; reaffirmed the absolute necessity, under all circumstances, of eliminating massive and flagrant violations of human rights and of the right of peoples and individuals affected by situations such as those resulting from *apartheid*, from all forms of racial discrimination, from colonialism, from foreign domination and occupation, from aggression and threats against national sovereignty, national unity and territorial integrity, as well as from the refusal to recognize the fundamental rights of peoples to self-determination and of every nation to the exercise of full sovereignty over its wealth and resources; reaffirmed that it was of paramount importance for the promotion of human rights and fundamental freedoms that Member States should undertake specific obligations through accession to or ratification of international instruments in this field and that, consequently, the standard-setting work within the United Nations in the field of human rights and the universal acceptance and implementation of the relevant instruments should be encouraged; recognized that, in order fully to guarantee human rights and complete personal dignity, it was necessary to guarantee the right to work, participation of workers in management, and the right to education, health and proper nourishment, through the adoption of measures at the national and international levels, including the establishment of the new international economic order; and emphasized that the right to development is a human right and that equality of opportunity for development is as much a prerogative of nations as of individuals within nations.

(3) *Torture and other cruel, inhuman or degrading treatment or punishment*

By its resolution 32/62 of 8 December 1977, the General Assembly requested the Commission on Human Rights to draw up a draft convention on torture and other cruel, inhuman or degrading treatment or punishment in the light of the principles embodied in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment, adopted by the Assembly in its resolution 3452 (XXX) of 9 December 1975.[112] At its thirty-fourth session, the Assembly, in its resolution 34/167 adopted on the recommendation of the Third

[109] General Assembly resolution 3068 (XXVIII), annex. Also reproduced in the *Juridical Yearbook*, 1973, p. 70.

[110] See the report of the Third Committee to the thirty-fourth session of the General Assembly on agenda item 86 (A/34/597).

[111] See the report of the Third Committee to the thirty-fourth session of the General Assembly on agenda item 87 (A/34/704).

[112] Reproduced in the *Juridical Yearbook*, 1975, p. 48 *et seq.*

Committee,[113] took note with satisfaction of the significant progress made in the drafting of the future convention during the thirty-fifth session of the Commission on Human Rights,[114] and requested the Commission at its thirty-sixth session to continue to give high priority to the question of completing the draft.

Furthermore, by its resolution 32/64 of 8 December 1977, the Assembly had called upon Member States to reinforce their support of the Declaration on the Protection of All Persons from Being Subjected to Torture, Inhuman or Degrading Treatment by making unilateral declarations against torture and other cruel, inhuman or degrading treatment.[115] A similar appeal was made by the Assembly in resolution 33/178. By its resolution 34/167 the Assembly invited Member States which had not yet done so to deposit such unilateral declarations with the Secretary-General.[116]

(4) *Measures to improve the situation and ensure the human rights and dignity of all migrant workers*

In its resolution 34/172, adopted on the recommendation of the Third Committee,[117] the General Assembly, bearing in mind *inter alia* the ILO Migrant Workers (Supplementary Provision) Convention, 1975[118] and the ILO Recommendation Concerning Migrant Workers, 1975[119] reaffirmed that the relationship between worker and employer is in itself a source of rights and obligations and that consequently a violation, or even a limitation, of those rights of migrant workers may be tantamount to a violation of the principles of the Universal Declaration of Human Rights. It further expressed its deep concern at the fact that migrant workers were not exercising their rights in the sphere of work as defined by the relevant international instruments and decided to undertake at its thirty-fifth session the elaboration of an international convention on the protection of the rights of all migrant workers and their families.

(5) *The right of* amparo, habeas corpus *or other legal remedies to the same effect*

By its resolution 34/178, adopted on the recommendation of the Third Committee,[120] the General Assembly, bearing in mind the provisions of the Universal Declaration on Human Rights,[121] of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[122] and of the International Covenant on Civil and Political Rights,[123] particularly article 9, paragraph 4 thereof which stipulates that anyone who is deprived of his liberty by arrest or detention will be entitled to take proceedings before a court in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful, noted that the year 1979 marked the three hundredth anniversary of the act which in 1679 gave statutory force to the remedy of *habeas corpus*. The Assembly expressed its conviction that the application within the legal system of States of *amparo*, *habeas corpus*, or other legal remedies to the same effect was of fundamental importance for

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[113] See the report of the Third Committee to the thirty-fourth session of the General Assembly on agenda item 88 (A/34/167).

[114] For detailed information see *Official Records of the Economic and Social Council, 1979, Supplement No. 6* (E/1979/36), Chap. VIII, sect. A.

[115] On the question of the legal force of such declarations, see the legal opinion given by the Office of Legal Affairs of the United Nations, reproduced on p. 198 of the *Juridical Yearbook*, 1978.

[116] As of 31 December 1979, the following States had made a unilateral declaration as called for under General Assembly resolutions 32/64, 33/178 and 34/167: Barbados, Democratic Yemen, India, Japan, Mauritius, Netherlands, Philippines, Portugal, Qatar, Senegal, Spain and Yugoslavia.

[117] See the report of the Third Committee to the thirty-fourth session of the General Assembly on agenda item 12 (A/34/829).

[118] International Labour Office, *Official Bulletin*, vol. LVIII, 1975, series A, No. 1, Convention No. 143.

[119] *Ibid.*, No. 1, Recommendation No. 151.

[120] See the report of the Third Committee to the thirty-fourth session of the General Assembly on agenda item 12 (A/34/829).

[121] Resolution 217 A (III).

[122] Resolution 3452 (XXX), annex. Also reproduced in the *Juridical Yearbook*, 1975, p. 48 *et seq.*

[123] Resolution 2200 A (XXI), annex. Also reproduced in the *Juridical Yearbook*, 1966, p. 170 *et seq.*

protecting persons against arbitrary arrest and unlawful detention, effecting the release of persons detained by reason of their political opinions or convictions and clarifying the whereabouts and fate of missing and disappeared persons, and called upon all Governments to guarantee to persons within their jurisdiction the full enjoyment of the right of *amparo*, *habeas corpus* or other legal remedies to the same effect, as may be applicable in their legal system.

(*g*) Status of women

Convention on the Elimination of All Forms of Discrimination against Women

By its resolution 34/180 adopted on the recommendation of the Third Committee,[124] the General Assembly adopted and opened for signature, ratification and accession the Convention on the Elimination of All Forms of Discrimination Against Women.[125]

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4. THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

The eighth session of the Third United Nations Conference on the Law of the Sea was held from 19 March to 27 April 1979 at the Office of the United Nations at Geneva.[126] This session was resumed from 19 July to 24 August 1979 at United Nations Headquarters in New York.[127] The basic document which the Conference had before it at the start of its eighth session was the so-called Informal Composite Negotiating Text (ICNT).[128]

A total of 139 States and the United Nations Council for Namibia participated in the first part of the eighth session. In addition, two territories,[129] 14 specialized agencies or United Nations bodies, 12 inter-governmental organizations, 27 non-governmental organizations having consultative status with the Economic and Social Council and three national liberation movements recognized by the Organization of African Unity or the League of Arab States participated as observers. A total of 143 States participated in the second part of the eighth session. In addition, two territories, 14 specialized agencies or United Nations bodies, 8 inter-governmental organizations, 17 non-governmental organizations having consultative status with the Economic and Social Council, and one national liberation movement recognized by the Organization of African Unity participated as observers.

The aim of the Third United Nations Conference on the Law of the Sea was to have a comprehensive convention on all ocean issues including those which were outstanding from the first two Conferences, held in 1958 and 1960. In particular, the Conference was to try to establish a definition of an international régime for the sea-bed and ocean floor beyond the limits of national jurisdiction and to ensure that the resources of the marine environment would be exploited for the benefit of mankind. This involved questions as to who might exploit the sea-bed and ocean floor beyond national jurisdiction and what the basic conditions of exploration and exploitation should be. These subjects were assigned to the First Committee. Definitions of and régimes for such concepts as the territorial sea, international straits, the continental shelf and an exclusive economic zone were dealt with by the Second Committee, and regulations to cover the preservation of the marine environment, marine scientific research and the development and transfer of technology were covered by the Third Committee.

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[124] See the report of the Third Committee to the thirty-fourth session of the General Assembly on agenda item 75 (A/34/830).

[125] Reproduced on p. 115 of this *Yearbook*.

[126] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XI (United Nations publication, Sales No.: E.80.V.6).

[127] *Ibid.*, vol. XII (United Nations publication, Sales No.: E.80.V.12).

[128] *Ibid.*, vol. VIII (United Nations publication, Sales No.: E.78.V.4).

[129] See General Assembly resolution 3334 (XXIX).

The subject of the settlement of disputes was dealt with by the plenary and, as relevant to their mandates, by each of the Committees. Other subjects dealt with in plenary were the preamble and final clauses and the peaceful uses of the sea.

The objective of the eighth session was the conclusion of informal negotiations and the revision of the ICNT.

The three negotiating groups on First Committee matters (Negotiating Groups I, II and III dealing respectively with the system of exploration and exploitation and resource policy, financial arrangements and the organs of the Authority) met during the first three weeks of the first part of the eighth session. On 25 April, their Chairmen presented reports and compromise formulae to the First Committee, as did also the Chairman of the Group of Legal Experts on settlement of disputes relating to First Committee matters. New proposals were put forward during the resumed eighth session regarding the voting in the Council of the Authority, financing of the Authority's first sea-bed mining project, the tax scheme for public and private entities that will engage in sea-bed mining and several matters relating to the system of exploitation, and consensus was reached on various points concerning the settlement of disputes.

The three negotiating groups on Second Committee matters, namely Negotiating Groups IV (on access to living resources on the Exclusive Economic Zone), VI (on the definition of the outer limits of the continental shelf) and VII (on the delimitation of maritime boundaries between adjacent and opposite States) also met and their respective Chairmen reported on 24 April on the work carried out.

At the resumed eighth session, the question of the continental shelf was discussed in a small group known as the Group of 38. The items considered by that group were: the outer limit of the continental shelf; payments and contributions with respect to the continental shelf beyond 200 miles; submarine ocean ridges; the Commission on the Continental Shelf; and the problem of Sri Lanka. Various proposals were submitted in connexion with these items.

Also at the resumed eighth session, negotiating Group VII resumed discussion on delimination and on the settlement of delimitation disputes.

The Third Committee continued its work mainly through informal meetings. On 23 April 1979, the Chairman reported to that Committee that agreement had been reached at these informal meetings on a revised article concerning the responsibility and liability of States in regard to damages caused by pollution and on a new article to encourage the establishment or strengthening of national marine scientific and technological research centres. At the resumed eighth session, the Third Committee met formally and informally to consider pending issues relating to marine scientific research on the continental shelf and the problem of settlement of disputes.

On 27 April 1979, the President of the Conference reported on matters relating to the settlement of disputes as dealt with in informal meetings of the plenary. He said there were still outstanding issues but that one informal proposal by Yugoslavia concerning the seat of the Law of the Sea Tribunal and consequential changes to annex V of the ICNT had been approved by the informal plenary. At the resumed session, the informal plenary met once and agreement was reached on part of the text of a proposal detailing conciliation procedures.

At its 117th meeting, on 19 July 1979, the Conference decided that the discussion of the final clauses would be undertaken in informal plenary meetings, to be assisted by a Group of Legal Experts (under the chairmanship of Mr. J. Evensen (Norway)). The subjects and issues to be examined were put in two categories, one characterized as controversial (including amendment or revision, reservation, relation to other conventions, entry into force, transitional provision, denunciation, and participation) and the other as non-controversial (including signature, ratification, status of annexes, authentic texts, and testimonial clause).

The Drafting Committee as well as its language groups continued to meet during the eighth session.

Other matters which were discussed during the eighth session included the issue of unilateral legislation for the training of personnel from developing countries for the Authority and the Enterprise and the site of the Authority.

The eighth session of the Conference resulted in the elaboration of a revised version of the ICNT (ICNT/Revision 1)[130] which was worked out by the President, the Chairmen of the three main committees, the Chairman of the Drafting Committee and the Rapporteur General.

On 9 November 1979, the General Assembly, by resolution 34/20, approved the convening of the two parts of the ninth session from 27 February to 4 April 1980 in New York and from 28 July to 29 August 1980 at Geneva. It also requested the Secretary-General, in his capacity as Secretary-General of the Conference, to prepare a study on the training needs of developing countries in deep-sea mining and relating activities for submission to the Conference as early as possible in 1980.

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5. INTERNATIONAL COURT OF JUSTICE[131, 132]

Cases submitted to the Court[133]

(i) *Continental shelf (Tunisia/Libyan Arab Jamahiriya)*

On 1 December 1978 the Government of Tunisia had notified to the Registrar of the Court a Special Agreement, drawn up in Arabic between Tunisia and the Libyan Arab Jamahiriya on 10 June 1977, which had come into force on the date of exchange of instruments of ratification, namely 27 February 1978. A certified French translation of the Agreement was attached.

The Special Agreement provided for the reference to the Court of a dispute between Tunisia and the Libyan Arab Jamahiriya concerning the delimitation of the continental shelf between them. *Inter alia*, it provided time-limits for Memorials and Counter-Memorials to be filed by each Party.

On 19 February 1979 the Libyan Government likewise communicated to the Registry a copy in Arabic of the Special Agreement, together with a certified English translation.

On 20 February 1979 the Vice-President of the Court, having regard to the agreement reached between the two States in respect of the filing of pleadings, made an Order fixing 30 May 1980 as the time-limit for the submission of Memorials by either Party.[134]

Each Memorial, having been filed within the time-limit, was communicated to the other Party at a meeting of the agents with the President of the Court.

(ii) *United States diplomatic and consular staff in Tehran (United States of America v. Iran)*

On 29 November 1979 the United States of America instituted proceedings against Iran in a case arising out of the situation at its Embassy in Tehran and Consulates at Tabriz and Shiraz, and the seizure and detention as hostages of its diplomatic and consular staff in Tehran and two more citizens of the United States. It requested at the same time the indication of provisional measures.

On 9 December 1979 the Minister for Foreign Affairs of Iran, in a letter to the Court, expressed the opinion that the Court could not, and should not, take cognizance of the case.

On 10 December 1979 the Court held a public hearing at which arguments were put forward on behalf of the United States by Mr. Benjamin R. Civiletti, Attorney-General, and Mr. Roberts B. Owen, the Agent of the United States. The Government of Iran was not represented at the hearing.

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[130] A/CONF.62/WP.10/Rev.1.

[131] For the composition of the Court, see *I.C.J. Yearbook 1978-79*, No. 33, p. 7.

[132] As of 31 December 1979, the number of States recognizing the jurisdiction of the Court as compulsory in accordance with declarations filed under article 36, paragraph 2, of the Statute stood at 46.

[133] For detailed information, see *I.C.J. Yearbook 1978-1979*, No. 33 and *I.C.J. Yearbook 1979-1980*, No. 34.

[134] *I.C.J. Reports 1979*, p. 3.

On 15 December 1979 the Court made an Order, read at a public sitting on that date, indicating unanimously the following provisional measures:

"A. (i) The Government of the Islamic Republic of Iran should immediately ensure that the premises of the United States Embassy, Chancery and Consulates be restored to the possession of the United States authorities under their exclusive control, and should ensure their inviolability and effective protection as provided for by the treaties in force between the two States, and by general international law;

"(ii) The Government of the Islamic Republic of Iran should ensure the immediate release, without any exception, of all persons of United States nationality who are or have been held in the Embassy of the United States of America or in the Ministry of Foreign Affairs in Tehran, or have been held as hostages elsewhere, and afford full protection to all such persons, in accordance with the treaties in force between the two States, and with general international law;

"(iii) The Government of the Islamic Republic of Iran should, as from that moment, afford to all the diplomatic and consular personnel of the United States the full protection, privileges and immunities to which they are entitled under the treaties in force between the two States, and under general international law, including immunity from any form of criminal jurisdiction and freedom and facilities to leave the territory of Iran;

"B. The Government of the United States of America and the Government of the Islamic Republic of Iran should not take any action and should ensure that no action is taken which may aggravate the tension between the two countries or render the existing dispute more difficult of solution."[135]

By an Order of 24 December 1979 the President of the Court fixed time-limits for the filing of written pleadings:[136]

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6. INTERNATIONAL LAW COMMISSION[137]

THIRTY-FIRST SESSION OF THE COMMISSION[138]

The International Law Commission held its thirty-first session at Geneva, Switzerland, from 14 May to 3 August 1979. The session was mainly devoted to completing the first reading of the draft articles on succession of States in respect of matters other than treaties and continuing work on the draft articles on State responsibility and on treaties concluded between States and international organizations or between international organizations.

Regarding the first of these topics, the Commission completed the first reading of the 25 draft articles on succession of States in respect of State property and State debts, which it had provisionally adopted during the twenty-fifth and twenty-seventh to thirtieth sessions. It deleted former articles 9 to 11 and took decisions on certain pending matters relating to texts or parts thereof which had previously appeared in square brackets in former articles X, 14, 18 and 20; thus, it adopted on first reading texts for articles 1 to 23. The Commission also considered the eleventh report submitted by the Special Rapporteur on the topic,[139] devoted to the question of succession of States in respect of State archives and adopted on first reading texts for two articles (A and B) on State archives.

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[135] *Ibid.*, p. 21.

[136] *Ibid.*, p. 23.

[137] For the membership of the Commission, see *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 10* (A/34/10), chap. I.

[138] For detailed information, see *Yearbook of the International Law Commission*, 1979, vol. I and vol. II [Parts One and Two] (United Nations publication, Sales No.: E.80.V.4, E.80.V.5 (Part I) and E.80.V.5 (Part II).

[139] A/CN.4/322 and Corr.1 (English and French only) and Add.1 and 2.

With respect to State responsibility the Commission, on the basis of the eighth report of the Special Rapporteur,[140] provisionally adopted the texts for articles 28 to 32: article 28 deals with the question of responsibility of a State for the internationally wrongful act of another State and articles 29 to 32 concerning four circumstances precluding wrongfulness, namely consent, countermeasures in respect of an internationally wrongful act, *force majeure* and fortuitous event and distress; two circumstances (state of necessity and self-defence) still have to be dealt with for part I of the draft, devoted to the origin of State responsibility to be completed on first reading.

On the question of treaties concluded between States and international organizations or between two or more international organizations, the Commission, on the basis of the seventh and eighth reports submitted by the Special Rapporteur for the topic,[141] provisionally adopted the texts for twenty-two articles forming part IV, "Amendment and modification of treaties" (articles 39 to 41) and a substantial portion of part IV, "Invalidity, termination and suspension of the operation of treaties" (articles 42 to 60).

The Commission also considered other topics, including the law of the non-navigational uses of international watercourses,[142] the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, jurisdictional immunities of States and their property[143] and review of the multilateral treaty-making process.

Consideration by the General Assembly

The report of the International Law Commission[144] was considered by the Sixth (Legal) Committee of the General Assembly at its thirty-fourth session.

On 17 December 1979, the General Assembly, on the recommendation of the Sixth Committee,[145] adopted resolution 34/141 whereby it approved the programme of work planned by the Commission for 1980 and recommended that it should (*a*) continue its work on succession of States in respect of matters other than treaties with the aim of completing, at its thirty-second (1980) session, the study of the question of State archives, and, at its thirty-third (1981) session, the second reading of the entire draft articles on succession of States in respect of matters other than treaties; (*b*) continue its work on State responsibility with the aim of completing, at its thirty-second (1980) session, the first reading of the set of articles constituting part I of the draft, and proceed to the study of the further part or parts of the draft with a view to making as much progress as possible in the elaboration of draft articles within the present term of office of the members of the Commission; (*c*) proceed with the preparation of draft articles on treaties concluded between States and international organizations or between international organizations with the aim of completing, at its thirty-second (1980) session, the first reading of these draft articles; (*d*) continue its work on the law of the non-navigational uses of international watercourses, on jurisdictional immunities of States and their property and on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, with a view to the possible elaboration of an appropriate legal instrument. It also requested the Commission to continue its work on the remaining topics in its current programme, namely, international liability for injurious consequences arising out of acts not prohibited by international law and the second part of the topic of relations between States and international organizations.

The Assembly expressed its appreciation to the Swiss Federal Council for the decision to accord, by analogy, to the members of the Commission, for the duration of the Commission's sessions at Geneva, the privileges and immunities to which the judges of the International Court of Justice are entitled while present in Switzerland, thereby facilitating the performance of the functions of the Commission's members.

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[140] A/CN.4/318 and Addenda.

[141] A/CN.4/312 and Corr.1 (French only) and A/CN.4/319.

[142] See document A/CN.4/320.

[143] See document A/CN.4/323.

[144] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 10* (A/34/10).

[145] See the report of the Sixth Committee to the thirty-fourth session of the General Assembly on agenda item 108 (A/34/785).

7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[146]

TWELFTH SESSION OF THE COMMISSION[147]

The United Nations Commission on International Trade Law (UNCITRAL) held its twelfth session at Vienna, Austria, from 18 to 29 June 1979.

In the area of international trade contracts, the Commission discussed a report of the Secretary-General on "Barter or Exchange in International Trade"[148] and requested in this connexion that the Secretariat include, in the studies being conducted in respect of contract practices, consideration of clauses of particular importance in barter — like transactions. The Commission also discussed a report of the Secretary-General on "Liquidated damages and penalty clause"[149] and asked the Working Group on International Contract Practices to consider the feasibility of formulating uniform rules regulating liquidated damages and penalty clauses applicable to a wide range of international trade contracts. On the subject of clauses protecting parties against the effects of currency fluctuations, the Commission requested the Secretariat to pursue the subject further with the Study Group on International Payments and the Working Group on International Negotiable Instruments, with specific reference to the desirability and feasibility of work by the Commission on this topic, and to submit a report on its findings to the Commission with appropriate recommendations.

With respect to international payments, the Commission had before it the report of the Working Group on International Negotiable Instruments[150] which dealt with the progress made by the Working Group in the preparation of a draft convention on international bills of exchange and international promissory notes. It authorized the Working Group to proceed with the formulation of uniform rules for international cheques. Other topics which were discussed by the Commission included the question of stand-by letters of credit[151] and that of the feasibility of uniform rules to be used in the financing of trade.[153]

In the area of international commercial arbitration and conciliation, the Commission had before it a note by the Secretariat on "Issues relevant in the context of the UNCITRAL Arbitration Rules",[153] which discussed the use of the Rules in administered arbitration and the designation of an appointing body, as well as two studies made pursuant to the recommendations of the Asian-African Legal Consultative Committee (AALCC) to the Commission at the tenth session, entitled, respectively, "Study on the application and interpretation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)"[154] and "Further work in respect of international commercial arbitration".[155] The text of a preliminary draft of UNCITRAL Conciliation Rules[156] and a report of the Secretary-General entitled "Conciliation of international trade disputes"[157] were also before the Commission. The Commission deliberated on the Rules and requested the Secretary-General to prepare a revised draft after consultations with interested international organizations and arbitral institutions and also taking into account the views expressed at the session.

With respect to the new international economic order, the Commission requested the Working Group which it established on the matter to examine the report of the Secretary-General on the new

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[146] For the membership of the Commission, see *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 46* (A/34/46), decision 34/308.

[147] For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. X, 1979 (United Nations publication, Sales No. E.81.V.2).

[148] A/CN.9/159.

[149] A/CN.9/161.

[150] A/CN.9/157.

[151] See document A/CN.9/163.

[152] See document A/CN.9/165.

[153] A/CN.9/170.

[154] A/CN.9/168.

[155] A/CN.9/169.

[156] A/CN.9/166.

[157] A/CN.9/167.

international economic order[158] and to take into account the discussions on this subject by the Commission in order to make recommendations as to specific topics which could appropriately form part of the programme of work of the Commission and to report to the Commission at its thirteenth session.

Other matters which were considered by the Commission included transport law, training and assistance, and the state of signatures and ratifications of the Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules).[159]

Consideration by the General Assembly

The report of UNCITRAL on the work of its twelfth session[160] was considered by the Sixth (Legal) Committee at the Assembly's 1979 session.

On the recommendation of the Sixth Committee,[161] the General Assembly adopted without a vote, resolution 34/142 by which it, among other things, noted that the significant increase in economic and trade relations between States had given rise to increased activities of a legislative nature by international bodies and organs both within and without the United Nations system and expressed the view that in order to avoid duplication of work or the establishment of conflicting rules the Commission co-ordinate and co-operate with other organizations on the harmonization and unification of the law of international trade; the Assembly further called upon all Governments to co-ordinate activities related to participation in the various international organizations concerned with international trade and requested the Secretary-General to take effective steps to secure a close co-ordination, especially between those parts of the Secretariat which are serving the Commission, the International Law Commission, the United Nations Industrial Development Organization and the Commission on Transnational Corporations. Further, the Assembly requested that the Secretary-General give a report to the Commission at each of its sessions on the legal activities of international organs, bodies and organizations concerned, together with recommendations as to steps to be taken by the Commission.

The Assembly also adopted resolution 34/143, by which it, among other things, called upon the Commission to continue to take account of the relevant provisions of the resolutions concerning the new international economic order and noted with satisfaction that the Commission had taken positive action by establishing a Working Group on the New International Economic Order and by conferring on it a specific mandate.

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8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE AND BY *AD HOC* LEGAL BODIES

(*a*) Question of enhancing the effectiveness of the principle of non-use of force in international relations

Pursuant to General Assembly resolution 33/96 of 16 December 1978, the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations met at United Nations Headquarters from 17 April to 11 May 1979. The Special Committee decided to re-establish an open-ended working group whose mandate would be the same as that entrusted to the Committee itself. The discussions of the working group revolved around two papers. Since the

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[158] A/CN.9/171.

[159] Reproduced on pp. 122 to 134 of the *Juridical Yearbook*, 1978.

[160] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17* (A/34/17).

[161] See the report of the Sixth Committee to the thirty-fourth session of the General Assembly on agenda item 111 (A/34/801).

Committee had not completed its work, it recognized the desirability of further consideration of the questions before it. Many delegations supported the continuation of the Committee's work and stressed the importance of the issues. On the other side there were delegations which took the position that the renewal of the mandate was a matter falling within the competence of the General Assembly.[162]

At the thirty-fourth session of the General Assembly, in the Sixth Committee, different views were expressed on the results of the work of the Special Committee and on the advisability of renewing its mandate.[163]

By resolution 34/13 of 9 November 1979, adopted by a recorded vote of 71 to 14, with 13 abstentions, the General Assembly, *inter alia*, decided that the Special Committee should continue its work with the goal of drafting, at the earliest possible date, a world treaty on the non-use of force in international relations as well as the peaceful settlement of disputes or such other recommendations as the Committee deemed appropriate.[164]

(*b*) Question of measures to prevent international terrorism

In accordance with General Assembly resolution 32/147 of 16 December 1977, the *Ad Hoc* Committee on International Terrorism met at United Nations Headquarters from 19 March to 6 April 1979. It held a general debate on the question and decided to establish an open-ended Working Group of the Whole to deal with the questions related to the causes of international terrorism and the measures to be taken against it, in that order. The Working Group examined several working papers on both issues. On the basis of the proposal made by its Working Group, the *Ad Hoc* Committee submitted to the General Assembly a number of recommendations relating to practical measures of co-operation for the speedy elimination of the problem of international terrorism.[165]

At the thirty-fourth session of the General Assembly, the report of the *Ad Hoc* Committee was discussed in the Sixth Committee and different views were expressed regarding the future of the item.[166]

The General Assembly, by resolution 34/145 of 19 December 1979, adopted by a recorded vote of 118 to none, with 22 abstentions, decided, *inter alia*, to welcome the results achieved by the *Ad Hoc* Committee during its last session, to adopt the recommendations submitted to the General Assembly relating to practical measures of co-operation for the speedy elimination of the problem of international terrorism,[167] and to request the Secretary-General to prepare a compilation on the basis of material provided by Member States of relevant provisions of national legislation dealing with the combatting of international terrorism, and to follow up, as appropriate, the implementation of the recommendations contained in the report of the *Ad Hoc* Committee and to submit a report to the General Assembly at its thirty-sixth session. It also decided to include the item in the provisional agenda of its thirty-sixth session.

(*c*) Proposal for an international convention against the taking of hostages

Pursuant to General Assembly resolution 33/19 of 29 November 1978, the *Ad Hoc* Committee on the Drafting of an International Convention against the Taking of Hostages met at the United Nations Office at Geneva from 29 January to 16 February 1979. It re-established the two working

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[162] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 41* (A/34/41).

[163] *Ibid., Thirty-fourth Session, Annexes*, agenda item 116, document A/36/642; and *ibid., Thirty-fourth Session, Sixth Committee*, 16th-25th meetings.

[164] General Assembly resolution 34/13, para. 2.

[165] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 37* (A/34/37).

[166] *Ibid., Thirty-fourth Session, Annexes*, agenda item 112, document A/34/786; and *ibid., Thirty-fourth Session, Sixth Committee*, 4th, 6th-10th, 57th and 59th meetings.

[167] *Ibid., Thirty-fourth Session, Supplement No. 37* (A/34/37), para. 118; see also the operative paragraphs of General Assembly resolution 34/145.

groups under the same conditions as the previous year:[168] Working Group I was requested to examine the thornier questions connected with the drafting of an international convention against the taking of hostages which it had identified in 1978 as relating to the scope of the convention and the question of national liberation movements, to the question of the definition of taking of hostages, to the question concerning extradiction and right of asylum and to the question concerning the respect for the principles of sovereignty and territorial integrity of States with regard to the release of hostages; it was also requested, in connexion with those questions, to try to find some common ground by means of consultations. Working Group II was requested to deal with draft articles that were not generally controversial and with texts on which Working Group I had come to an agreement.

On the basis of the reports of the two Working Groups, which it approved, the *Ad Hoc* Committee prepared the draft of an international convention against the taking of hostages, which it recommended to the General Assembly for further consideration and adoption. The text of the draft convention included provisions which had not been completely agreed upon and which appeared therein in square brackets.[169]

At the thirty-fourth session of the General Assembly, the Sixth Committee agreed that the draft convention prepared by the *Ad Hoc* Committee would, after initial consideration within the Sixth Committee, be referred to a Working Group made up of those States which were members of the *Ad Hoc* Committee, with the understanding that its membership would be open-ended. The Working Group would review the draft convention on an article-by-article basis and would report back to the Sixth Committee at a later stage.[170] On the basis of the report of the Working Group, the Sixth Committee recommended to the General Assembly the adoption of a draft resolution containing as an annex the text of an International Convention against the Taking of Hostages.[171]

By resolution 34/146 of 17 December 1979, the General Assembly adopted without a vote the draft resolution recommended by the Sixth Committee. The text of the Convention is reproduced below in chapter IV.

(*d*) Question concerning the Charter of the United Nations and the enhancing of the role of the Organization

Pursuant to General Assembly resolution 33/94 of 16 December 1978, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met at the United Nations Office at Geneva from 19 February to 16 March 1979. An open-ended Working Group was established which discussed all three topics referred to in paragraph 3 of resolution 33/94, namely, the question of the peaceful settlement of disputes, the question of rationalization of existing procedures and the question of the maintenance of international peace and security. It considered working papers on the two latter items and prepared a list of proposals on the question of the peaceful settlement of disputes, allocating priorities for its future work on the matter, subject to the approval of the General Assembly.[172]

At the thirty-fourth session of the General Assembly, different views were expressed in the Sixth Committee on the results achieved by the Special Committee and, particularly, on the contents of its further mandate, as well as on the appropriateness of renewing it.[173]

The Assembly, by resolution 34/147 of 17 December 1979, adopted by a recorded vote of 116 to none, with 23 abstentions, decided to renew the mandate of the Committee.[174]

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[168] See *Juridical Yearbook*, 1978, p. 84.

[169] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 39* (A/34/39).

[170] *Ibid., Thirty-fourth Session, Annexes*, agenda item 113, document A/34/819.

[171] The draft resolution as a whole was recommended by consensus. A vote was taken on article 9 of the draft, which was recommended by a vote of 103 to 10, with 4 abstentions (*ibid.*, para. 14 (*a*) and (*b*)).

[172] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 33* (A/34/33).

[173] *Ibid., Thirty-fourth Session, Annexes*, agenda item 114, document A/34/769.

[174] See, in particular, paras. 2, 3 and 4 of resolution 34/147.

(*e*) State of signatures and ratifications of the Protocols Additional to the Geneva Convention of 1949 concerning the respect for human rights in armed conflicts

By its resolution 34/51 of 23 November 1979 adopted without a vote the General Assembly, *inter alia*, reiterated its call contained in resolution 32/44 that all States consider without delay the matter of ratifying or acceding to the two Protocols Additional to the Geneva Conventions of 1949 concerning the respect for human rights in armed conflicts and it requested the Secretary-General to inform the General Assembly, preferably at the beginning of each calendar year, of the state of ratification of, and accession to, the two Protocols with a view to enabling it to take the matter up at a later stage if it deemed it appropriate.

(*f*) Consolidation and progressive development of the principles and norms of international economic law relating in particular to the legal aspects of the new economic order

By its resolution 34/150 of 17 December 1979, adopted by a recorded vote of 112 to 6, with 26 abstentions, the General Assembly, *inter alia* requested the Secretary-General, in collaboration with UNITAR and in co-ordination with UNCITRAL, to study the question of the consolidation and progressive development of the principles and norms of international economic law relating in particular to the legal aspects of the new international economic order, with a view to embodying them in one or more instruments as appropriate; the Assembly also invited Member States to submit their views on the question and it requested the Secretary-General to submit to the Assembly at its thirty-fifth session a preliminary report on the study and the views of Governments received.

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9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH[175]

UNITAR continued to administer the International Law Fellowship Programme, as a major part of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. Under the same Programme, UNITAR also organized jointly with The Hague Academy of International Law a regional training and refresher course in international law for Latin America which was held in Mexico City in May 1979. The seminar leaders were legal experts from Latin America and other parts of the world.

The research activities of the Institute were carried out in 1979 in two programmes namely a programme on the United Nations and the new international economic order and a programme in international law, diplomacy and security. Under the latter programme UNITAR formulated a research project on *travaux preparatoires* of United Nations multilateral conventions concentrating on specific conventions such as the 1951 Convention relating to the Status of Refugees;[176] another project under the same programme consists of a thorough and comprehensive study of the impact of scientific and technological change on the responsibility of States for injuries in international law arising from their misuse or negligent control of technologically advanced instruments, materials or fuels.

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[175] For detailed information see *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 14* (A/34/14), and *ibid., Thirty-fifth Session, Supplement No. 14* (A/35/14).

[176] United Nations, *Treaty Series*, vol. 189, p. 137.

B. General review of the activities of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANISATION[177]

1. The International Labour Conference (ILC), which held its 65th Session in Geneva in June 1979, adopted the following instruments: a Convention and a Recommendation concerning Occupational Safety and Health in Dock Work;[178] and a Convention and a Recommendation concerning Hours of Work and Rest Periods in Road Transport.[179]

2. ILC also adopted certain amendments to its Standing Orders:[180]

(i) Article 19 of the Standing Orders of the International Labour Conference was amended to introduce the possibility of secret ballots in the International Labour Conference in certain circumstances.

(ii) Article 32 of the Standing Orders of the International Labour Conference was amended to make it unnecessary to reopen annually the question of the right to vote of members having arrears of contributions but complying with an arrangement for their payment by instalments.

3. The Committee of Experts on the Application of Conventions and Recommendations met in Geneva from 15 to 28 March 1979, and presented its report.[181]

4. The Governing Body Committee on Freedom of Association met in Geneva and adopted Reports Nos. 190,[182] 191,[182] 192[182] and 193[182] (209th Session of the Governing Body, February-March 1979); Reports Nos. 194,[183] 195[183] and 196[183] (210th Session of the Governing Body, May-June 1979); and Reports 197[184] and 198[184] (211th Session of the Governing Body, November 1979).

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[177] With regard to the adoption of instruments, information on the preparatory work which, by virtue of the double-discussion procedure, normally covers a period of two years, is given, in order to facilitate reference work, in the year during which the instrument was adopted.

[178] *Official Bulletin*, vol. LXII, 1979, Series A, No. 2, pp. 57-70 and 76-79. Regarding preparatory work, see: *First Discussion*—Revision of the Protection against Accidents (Dockers Convention (Revised)), 1932 (No. 32) ILC, 64th Session (1978), Report VI (1) (this report contains, *inter alia*, details of the action which led to the placing of the question on the agenda of the Conference) and Report VI (2), 64 and 105 pages respectively. See also ILC, 64th Session (1978) *Provisional Record of Proceedings*, Nos. 30; 34, pp. 15-18. *Second Discussion* — Revision of the Protection against Accidents (Dockers Convention (Revised)), 1932 (No. 32), ILC, 65th Session (1979), Report IV (1) and Report IV (2), 82 and 97 pages respectively. See also ILC, 65th Session (1979), *Provisional Record of Proceedings*, Nos. 28; 28A; 28B; 35, pp. 1-6; 39, pp. 3-4.

[179] *Official Bulletin*, vol. LXII, 1979, Series A, No. 2, pp. 70-76 and 80-85. Regarding preparatory work, see: *First Discussion* — Hours of Work and Rest Periods in Road Transport, ILC, 64th Session, 1978, Report VII (1) (this report contains, *inter alia*, details of the action which led to the placing of the question on the agenda of the Conference), and Report VII (2), 77 and 112 pages respectively. See also ILC, 64th Session (1978), *Provisional Record of Proceedings* Nos. 32; 35, pp. 27-31. *Second Discussion* — Hours of Work and Rest Periods in Road Transport, ILC, 65th Session (1979), Report V (1) and Report V (2), 64 and 73 pages respectively. See also ILC, 65th Session (1979), *Provisional Record of Proceedings*, Nos. 32; 32A; 32B; 37, pp. 4-11; 39, pp. 1-3; 44, pp. 1-2.

[180] ILC, 65th Session (1979), *Provisional Record of Proceedings*, Nos. 3; 24; 29, pp. 1-7. *Official Bulletin*, Vol. LXII, 1979, Series A., No. 2, pp. 115-116.

[181] This report has been published as Report III (Part 4) to the 65th Session of the Conference and comprises two volumes: Vol. A: "General Report and Observations concerning Particular Countries" (Report III (Part 4A)), 258 pages. Vol. B: "General Survey on the Reports concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)" (Report III (part 4B)), 101 pages.

[182] *Official Bulletin*, vol. LXII, 1979, Series B, No. 1.

[183] *Ibid.*, No. 2.

[184] *Ibid.*, No. 3.

2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

I. OFFICE OF THE LEGAL COUNSEL[185]

1. *Constitutional matters*

In addition to current legal advice and services provided to the Director-General and various departments within the Organization, the Office of the Legal Counsel provided legal services to the Committee on Constitutional and Legal Matters (CCLM), the Conference, Council and other statutory bodies of the Organization.

(a) *Amendments to the Basic Texts of the Organization and to the Statutes of FAO bodies*

The Conference adopted, at its twentieth session (10-29 November 1979), the following resolutions or decisions:

A resolution amending the French version of the Constitution and the General Rules of the Organization and correcting a mistake in the terminology used in all language versions of Article IV.2 of the Constitution;[186]

A resolution amending Rules XXVI.9 and XXVII.9 of the General Rules of the Organization to permit full reimbursement of travel costs properly incurred by representatives of members of the Programme and Finance Committees;[187]

A resolution amending Rule XXXII of the General Rules of the Organization to make explicit reference to nutrition in the terms of reference of the Committee on Agriculture;[188]

A resolution adding to the Basic Texts procedures for the establishment and abolition of statutory bodies created under Articles VI, XIV or XV of the Constitution.[189]

The Council, at its seventy-fifth session (June 1979), decided to amend its Rules of Procedure to increase the number of its Vice-Chairmen from two to three.[190]

(b) *Admission to membership*

The Conference admitted Dominica, Samoa and Saint Lucia to membership in the Organization.[191]

(c) *Agreements and arrangements with intergovernmental organizations and bodies*

Intersecretariat arrangements relating to co-operation were concluded between FAO and certain intergovernmental organizations and bodies including the World Tourism Organization, the Arab Authority for Agricultural Investment (AAAID) and the West African Economic Community.

(d) *Treaties concluded under Article XIV of the FAO Constitution*[192]

The Council, at its seventy-fifth session (June 1979), adopted a resolution approving amendments to the Plant Protection Agreement for the South-East Asia and Pacific Region.[193]

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[185] For general information on the organization and functions of the Office of the Legal Counsel, see *Juridical Yearbook, 1972*, p. 60.

[186] C 79/REP, paras. 433-434.

[187] *Ibid.*, paras. 435-438.

[188] *Ibid.*, paras. 444-447.

[189] *Ibid.*, paras. 439-443.

[190] CL 75/REP, paras. 3-4.

[191] C 79/REP, paras. 486-489.

[192] The Office of the Legal Counsel prepared for submission to the twentieth session of the FAO Conference a report reflecting the present status of all treaties of which the Director-General is the depositary (C 79/10 and Suppl.1). See also C 79/III/PV/1 and PV/6, C 79/PV/19 and C 79/REP, para. 449.

[193] CL 75/REP, paras. 194-196 and appendix G.

These amendments come into force as from the thirtieth day after their acceptance by two thirds of the contracting parties.

The Council, at its seventy-sixth session (November 1979), adopted a resolution approving amendments to the Agreement for the Establishment of a Regional Animal Production and Health Commission for Asia, the Far East and the South-West Pacific.[194] These amendments came into force on the date of their approval by the Council.

The Conference, at its twentieth session (November 1979), adopted a resolution approving amendments to the International Plant Protection Convention.[195] These amendments come into force as from the thirtieth day after their acceptance by two thirds of the contracting parties. The Conference resolution stressed the fact that it was in the interest of the international community that the revised text should enter into force without delay and recommended that parties to any dispute arising out of the Convention seek settlement through diplomatic or other channels before having recourse to the procedures for settlement of disputes as provided for in the Convention.

(e) *Treaties adopted at conferences convened by FAO*[192]

Agreement for the Establishment of a Centre on Integrated Rural Development for Africa (CIRD Africa).

A Government Consultation, consisting of plenipotentiaries from 34 African States, which met in Arusha, United Republic of Tanzania, from 18 to 21 September 1979, adopted and opened for signature the aforementioned Agreement setting up a Centre outside the framework of FAO. Pursuant to paragraph 2 of Article XXII, the Agreement was open for signature in Arusha on 21 September 1979, and this thereafter open for signature at FAO Headquarters in Rome.

In accordance with Article XII, paragraph 1, of the Agreement, States listed in its Annex I may become parties to the Agreement by signature followed by the deposit of an instrument of ratification, or by the deposit of an instrument of accession, with the Depositary. Other African States may be admitted by the Governing Council of the Centre in accordance with Article XII, paragraph 5.

Article XII, paragraph 4, of the Agreement provides that it will enter into force with respect to all States that have ratified or acceded to it when instruments of ratification or accession have been deposited by the Government of the United Republic of Tanzania and by the Governments of at least five other eligible States.

By 31 December 1979, the Agreement had been signed, subject to ratification, by the representatives of 19 States. By the said date, instruments of ratification had been received from two governments including the host Government.

(f) *Activities of legal interest relating to commodities and international trade*

The Informal Price Arrangements operated under the Intergovernmental Group on Hard Fibres were reviewed in April 1979. The indicative price range of East African U.G. sisal was raised, while export quotas were left suspended pending review.[196]

The Intergovernmental Group on Hard Fibres reached broad agreement on the objectives of a new body — Coir International, to be created in order to initiate and co-ordinate research, development and promotional programmes for Coir.[194]

The indicative price ranges of the Informal Arrangement on Jute, Kenaf and Allied Fibres were reviewed by the Intergovernmental Group in October 1979. The indicative price for jute was retained for 1979/1980 at the 1978 level and the price range for Thai kenaf was raised.[198]

[194] CL 76/REP, paras. 91-92 and appendix F.
[195] C 79/REP, paras. 450-455 and appendix G.
[196] CCP 79/5, para. 7, April 1979.
[197] *Ibid.*, paras. 32-35, April 1979.
[198] CCP 79/15, paras. 20 and 22, October 1979.

In 1979, intergovernmental groups (on Rice, Meat and on Oilseeds, Oils and Fats) showed continued preference for the use of International Guidelines to provide a "code of conduct" to attain certain agreed goals, as an alternative to formal commodity arrangements. The Intergovernmental Group on Rice adopted a revised and strengthened set of Guidelines on National and International Action on Rice.[199] The Intergovernmental Group on Oilseeds, Oils and Fats considered in detail draft Guidelines for International Co-operation with respect to these commodities.[200]

(g) *World Conference on Agrarian Reform and Rural Development (WCARRD)*

The Legal Office provided services to this Conference held in Rome from 12-20 July 1979. The report of the Conference[201] includes a Declaration of Principles and a Programme of Action the implementation of which would, *inter alia*, require legislative action by Governments in some of the specific fields discussed at the Conference. The WCARRD Declaration of Principles and Programme of Action was endorsed by resolution No. 7/79 of the twentieth session of the FAO Conference (November 1979)[202] and by resolution No. A/RES/34/14 of the thirty-fourth session of the United Nations General Assembly (November 1979).

At its twentieth session, the FAO Conference adopted a resolution endorsing the Plan of Action on World Food Security that had been approved by the Council at its seventy-fifth session.[203]

(h) *United Nations Human Rights Covenants*

As provided for in operative paragraph 8 of Economic and Social Council resolution 1988 (LX), on procedures for the implementation on the International Covenant on Economic, Social and Cultural Rights, in 1979 FAO co-operated with the United Nations in the preparation of general guidelines for reports under part IV of the Covenant. The guidelines related to reports concerning Articles 10 to 12 of the Covenant.

(i) *Miscellaneous resolutions and decisions of legal interest*

At its twentieth session (November 1979), the FAO Conference adopted a resolution on the FAO Regional Office for the Near East[204]; and a decision endorsing the proposed change in the title of the FAO Regional Office for Asia and the Far East and of the Regional Conference for Asia and the Far East to "Regional Office for Asia and the Pacific" and "Regional Conference for Asia and the Pacific";[205]

The Director-General promulgated a revised text of Section 331 of the Administrative Manual, "Appeals", setting out new and more detailed procedures regarding internal appeals.

2. *Law of the Sea and International Fisheries*

At its thirteenth session in October 1979, the FAO Committee on Fisheries approved detailed proposals submitted by the Secretariat for the planning and execution of a comprehensive programme to assist developing coastal States in managing and developing fisheries in their exclusive economic zones. The Committee particularly welcomed the key role accorded to the FAO regional fishery bodies as instruments for the execution of the Programme, but recognized that it might be necessary to make adjustments in their present structure so that they could better reflect such factors as shared stocks or fisheries, common problems or opportunities and other natural affinities among the coastal States concerned. In reviewing the legal and institutional implications of

[199] CCP 79/4, para. 55, March 1979.
[200] CCP 79/3, paras. 21-22, February 1979.
[201] WCARRD/REP, July 1979.
[202] C 79/REP, paras. 372-385.
[203] *Ibid.*, paras. 74-87; CL 75/REP, paras. 30-41.
[204] *Ibid.*, paras. 484-485.
[205] *Ibid.*, paras. 437-446.

the new ocean régime, the Committee identified five main topics on which research and technical assistance could be concentrated. These were national legislation, surveillance and enforcement, fisheries development corporations, joint ventures and other bilateral agreements, and small-scale fisheries development. In order to provide such assistance, four regional fisheries law advisory programmes have been set up, covering the Indian Ocean, West Africa, Caribbean and Western Pacific/South China Sea regions.

The Committee also noted with satisfaction that the Indo-Pacific Fishery Commission and the Indian Ocean Fishery Commission were giving urgent attention to proposals for short- and long-term management of tunas. The view was expressed that FAO has a vital role to play in assisting developing countries to weigh options for the development of their tuna fisheries and the Committee emphasized the importance of all regional tuna bodies addressing the growing problems and opportunities resulting from the extension of fisheries jurisdiction by coastal States.

At its sixth session in December 1979, the Fishery Committee for the Eastern Central Atlantic adopted a recommendation concerning minimum mesh size for the exploitation of all demersal species and formulated procedures to ensure the prompt and full enforcement of this measure. It requested the preparation by FAO of a study on the operation of fishery joint ventures in the region and the convening of a special consultation on this subject. It also requested a study on the possibilities for sub-regional or regional co-operation in matters related to methods of control and surveillance, which should serve as background documentation for a consultation of coastal countries in the area to be convened by FAO.

3. *Environmental Law*

FAO assistance also related to international and national environment law, including advice on desertification control and rangelands management legislation (Tunisia). The Legal Office continued its co-operation with the United Nations Environment Programme (UNEP), completed the preparatory legal work for the joint project on the protection of the marine environment in the Gulf of Guinea and adjacent areas. It took part in the UNEP Joint Programme exercises and in the UNEP work on the Mediterranean Action Plan, carrying out preparatory legal work for a co-operative programme for the promotion and establishment of marine parks and protected areas in the Mediterranean. It helped in the finalization of the World Conservation Strategy. In addition, it has begun research on the legal aspects of the assessment of the environment impact of agricultural development.

II. LEGISLATION BRANCH[206]

(a) *Activities connected with international meetings*

The Legislation Branch participated in and provided contributions to the following international meetings:

Council of Europe, European workshop on problems related to the modification of water resources (Strasbourg, France, 18-24 March 1979).

UNCTC/SCSP/FAO regional training workshops on joint venture agreements in fisheries (Manila, Philippines, 15-27 January 1979).

Interorganization meeting for the study of a Draft Convention on Inspection Services at the Frontier, organized by the Economic Commission for Europe (Geneva, Switzerland, 9-11 July 1979).

[206] For general information on the organization and functions of the Legislation Branch, see *Juridical Yearbook, 1972*, p. 62, note 59.

(b) *Legislative assistance and expert advice in the field*

During the course of 1979 legislative assistance was given to the following:

International water resources law (Kenya);

Fisheries legislation (Algeria, Bangladesh, Cayman Islands, Guinea, Kenya, Liberia, Mauritania, Oman, Seychelles, Sierra Leone, Somalia, Sri Lanka);

Forestry legislation (Mozambique);

Seed legislation (Sudan);

Milk legislation (Pakistan);

Fertilizer legislation (Thailand);

Agricultural credit legislation (Venezuela).

(c) *Legal assistance and advice not involving field missions*

Assistance and advice were provided to Governments, agencies, projects or FAO technical departments on the following subjects: water law in Libya and in the United Arab Emirates; fisheries legislation in Papua New Guinea, New Hebrides, Sri Lanka and Malaysia; forestry co-operation in the Yemen Arab Republic; weedkillers legislation for the Sudan; food legislation for Turkey; food hygiene standards for China; legislation on food-packaging materials for Romania; and a draft Code of Practice for the inspection of slaughter animals for the Joint FAO/WHO Codex Alimentarius Commission.

(d) *Legislative research and publications*

Research was conducted, *inter alia*, on water legislation in selected European countries and in South American countries; legal aspects of irrigation associations in Latin America; legal-institutional aspects of international rivers in Africa; crop insurance legislation; coastal State requirements for foreign fisheries; parastatal bodies in fisheries; forestry legislation in South-East Asia; wildlife and protected areas legislation in selected countries of Europe; and seed legislation in various countries.

(e) *Collection, translation and dissemination of legislative information*

FAO publishes, semi-annually, the *Food and Agricultural Legislation*. Annotated lists of relevant laws and regulations appear regularly in *Land reform, land settlement and cooperatives*, a semi-annual FAO publication. Similar lists are also published in the semi-annual *Food and Nutrition Review* and in *Unasylva* [*An international journal of forestry and forest industries*].

3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

1. CONSTITUTIONAL AND PROCEDURAL QUESTIONS

Membership of the organization

Indicated below is information on the signature and acceptance of the Constitution of UNESCO by States which became members of the organization within the period covered by this review:

State	*Date of signature*	*Date of deposit of instrument of acceptance*
Commonwealth of Dominica	20 November 1978	9 January 1979
Equatorial Guinea	29 November 1979	29 November 1979

Under the terms of the relevant provisions of the Constitution[207] each of the above-mentioned States became a member of the organization on the respective date its acceptance took effect.

In the case of the Commonwealth of Dominica, as it was then not a Member State of the United Nations, article II (2) of the UNESCO Constitution applied to it. Thus, before the Commonwealth of Dominica deposited its instrument of acceptance, the General Conference had, following an application received from the Government of this State and upon recommendation of the Executive Board, adopted by the required two-thirds majority a resolution admitting it to membership of UNESCO.[208]

2. INTERNATIONAL REGULATIONS

(a) *Instruments adopted by international conferences of States convened by UNESCO*

Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties and additional Protocol (adopted on 13 December 1979 at Madrid, Spain).

Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region (adopted on 27 December 1979 at Paris, France).

(b) *Transmission of certified copies of instruments previously adopted*

In pursuance of Article 15 of the "Rules of Procedure concerning Recommendations to Member States and International Convention covered by the terms of Article IV, paragraph 4, of the Constitution", the Director-General transmitted to Member States in early 1979 certified copies of the following four recommendations which were adopted by the General Conference during its twentieth session held at its headquarters from 24 October to 28 November 1978:

Revised recommendation concerning international competitions in architecture and town planning;

Recommendation for the protection of movable cultural property;

Revised recommendation concerning the international standardization of educational statistics;

Recommendation concerning the international standardization of statistics on science and technology.

The certified copies were sent to Member States in order that they could submit these recommendations to their competent authorities, in accordance with article IV, paragraph 4, of the Constitution.

Transmitted with the certified copies were copies of a "Memorandum concerning the obligation to submit conventions and recommendations adopted by the General Conference to the 'competent authorities' and the submission of initial special reports on the action taken upon these conventions and recommendations". This Memorandum was prepared, upon instructions from the General Conference, by the Director-General. It contains the various provisions of the Constitution and the regulations applicable, together with the other suggestions that the General Conference itself has found it necessary to formulate, at its earlier sessions, concerning the matters indicated by the Memorandum's comprehensive title.

(c) *Preparation of new instruments*

In implementation of decisions[209] taken by the General Conference at its twentieth session to that effect, and in accordance with article 10 (1) and (2) of the "Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of

[207] See articles II and XV of the UNESCO Constitution.
[208] See resolution C/O.72, 6 November 1978.
[209] See resolutions 20 C/4/3.6/3, 20 C/4/7.6/1(II), and 20 C/5/10.2/1(II).

Article IV, paragraph 4, of the Constitution", the Director-General prepared and transmitted to Member States for their comments and observations preliminary reports on the following subjects:

The condition of the artist;[210]

The safeguarding and preservation of moving images;[211]

The international standardization of statistics on public financing of cultural activities.[212]

3. Copyright and neighbouring rights

(a) *Universal Copyright Convention*

The Intergovernmental Copyright Committee (IGC), established by article XI of the Convention as revised at Paris on 24 July 1971, and for which UNESCO provides the secretariat, held its two-part split-up third ordinary session — the first part at the headquarters of the World Intellectual Property Organization (WIPO) in Geneva from 5 to 9 February 1979 and the second part at UNESCO headquarters in Paris from 24 to 31 October 1979.

During the course of those two split-up sessions IGC deliberated upon a number of questions, some of which concerned IGC alone and others which equally concerned the Executive Committee of the Berne Union which held its fourteenth (fifth ordinary) and sixteenth (sixth ordinary) sessions, respectively, at the same places and on the same dates.

As regards matters concerning IGC alone, (i) it set up a Sub-Committee to prepare the revision of its Rules of Procedure (Rules 47 and 48) and to examine the relationship between Article XI, paragraph 3, of the 1952 text and the same Article of the 1971 text of the Convention; (ii) the Committee also decided to amend Rule 22 of its Rules of Procedure, adding Arabic and Russian to the list of its working languages.

The problems of common interest to the two Committees which were considered are: (i) the problems raised by the application of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite. The Convention entered into force with effect from 25 August 1979; (ii) those concerning the application of the Paris Texts of 1971 of the Universal Copyright Convention and of the Berne Convention in respect of access by developing countries to works protected under these Conventions; (iii) copyright problems arising from the use of computers for access to protected works or the creation of works; (iv) the problems arising from the transmission by cable of television programmes and those arising from the use of audio-visual cassettes and discs; (v) the report prepared by the World Council for Welfare of the Blind (WCWB) on the application of the Universal Copyright Convention and of the Berne Convention to materials specially intended for the blind; and (vi) cognizance was taken of the results of the studies of UNESCO on a global and interdisciplinary basis of all aspects — cultural, social, legal, etc. — of the protection of folklore.[213]

(b) *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)*

The Intergovernmental Committee established under article 32 of the Rome Convention, for which the ILO, UNESCO and WIPO provide the joint secretariat, held its seventh ordinary session at UNESCO headquarters in Paris on 22 and 30 October 1979.

At this session the Committee considered, in particular, (i) the report of its Sub-Committee on the implementation of the Rome Convention (Geneva, 29 January-2 February); (ii) the application of the Convention for the Protection of Producers of Phonograms against Unauthorized

[210] See document CC/MD/43.
[211] See document CC-79/WS/95.
[212] See document ST/MD/3.
[213] See documents IGC(1971)/III/19 (Report of the First Part) and IGC(1971)/III/30 (Report of the Second Part).

Duplication of their Phonograms (Phonogram Convention); (iii) the application of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellite Convention) — it noted the coming into force of the Convention with effect from 25 August 1979; (iv) the report of its Sub-Committees on (*a*) the transmission of television programmes by cable (July 1978), and (*b*) the legal problems arising from the use of video-cassettes and discs (September 1978).[214]

(c) *Sub-Committee of the Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) on the Implementation of that Convention*

In pursuance of the decisions of the Intergovernmental Committee of the Rome Convention at its sixth ordinary session (Geneva, December 1977), a Sub-Committee of the said Intergovernmental Committee on the implementation of the Rome Convention met at Geneva from 29 January to 2 February 1979 to study the replies to the joint ILO/UNESCO/WIPO inquiry on the application and implementation of the said Convention and to recommend further action to the seventh ordinary session of the Intergovernmental Committee. The Sub-Committee studied the joint ILO/UNESCO/WIPO report on the inquiry mentioned above and adopted certain recommendations to promote adherence to the Convention and to provide guidance to the States on the implementation and practical application of the Convention. The recommendations were submitted to and approved by the seventh ordinary session of the Intergovernmental Committee at its October 1979 session.[215]

(d) *Working Group on Copyright Problems Arising from the Use of Computers for Access to Protected Works or the Creation of Works*

In accordance with the decisions of their respective governing bodies as well as the recommendations made by the Intergovernmental Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union at their November-December 1977 sessions, as also the said Committees' deliberations at their February 1979 sessions, the secretariat of UNESCO and the International Bureau of WIPO jointly convened a working group to study the copyright problems arising from the use of computers for access to protected works or the creation of works. The Working Group, which met in Geneva from 28 to 31 May 1979, based its discussions on two reports on (i) copyright problems arising from the use of electronic computers and related facilities for storage and retrieval of copyright works, and (ii) problems arising from the use of electronic computers for creation of works. The two Committees, at their October 1979 sessions, noted the contents of the Working Group's report[216] and the fact that a Committee of Governmental Experts on these problems will be convened in 1980.

(e) *Committee of Governmental Experts on the Implementation of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellite Convention)*

Pursuant to resolution 5/9.2/1/I adopted by the General Conference of UNESCO at its twentieth session and the decisions taken by the governing bodies of WIPO at their September 1978 sessions, a Committee of Governmental Experts on the Implementation of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite was convened jointly by UNESCO and WIPO, which met at UNESCO headquarters in Paris from 11 to 14 June 1979. On the basis of the guiding principles for the implementation of that Convention prepared by an earlier Working Group on the subject (April 1978) and which consisted of two draft model provisions, the Committee of Governmental Experts adopted the texts of the said two draft model provisions, one granting broadcasting organizations the right to authorize or prohibit the distribution of their signals and the other prohibiting operations governed by the Convention.[217]

[214] Report of the seventh ordinary session of the Committee, ILO/UNESCO/WIPO/ICR/7/11.
[215] Report of the Sub-Committee, ILO/UNESCO/WIPO/ICR/SC.1/IMP/5.
[216] UNESCO/WIPO/GTO/8.
[217] See report of the Committee of Governmental Experts, UNESCO/WIPO/SAT/CEG/I/6.

(f) *Application of the revised Paris texts of 1971 of the Universal Copyright Convention and of the Berne Convention in respect of Developing Countries: Working Group on the Overall Problems Posed for Developing Countries by Access to Works Protected under these Conventions*

In accordance with the decisions taken by the Intergovernmental Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union at the November-December 1977 sessions, the secretariat of UNESCO and the International Bureau of WIPO convened a Working Group to undertake an over-all study of the problems posed for developing countries by access to works protected under the revised texts of 1971 of the Universal Copyright Convention and of the Berne Convention which met in Paris from 2 to 6 July 1979. The Working Group based its deliberations on the replies by States to a joint UNESCO/WIPO questionnaire for the information needed for the above study and an analysis of those replies. The Group examined the over-all problems referred to above in all their legal, economic and practical aspects and adopted a number of recommendations which were submitted to the above Committees at their October 1979 sessions.[218]

(g) *Working Group on Works in the Public Domain*

Pursuant to paragraph 5020 of the work plan relating to resolution 5/9.2/1/1 adopted by the General Conference of UNESCO at its twentieth session, UNESCO convened a Working Group on Works in the Public Domain to find ways to secure the right to respect or integrity for works in the public domain which met at UNESCO headquarters from 18 to 21 September 1979. It considered an analysis by the secretariat of replies to a survey, conducted in 1978 by the secretariat of UNESCO, on the problems presented by the questions of protecting works in the public domain and, having developed certain principles, expressed the hope that those principles might serve as the basis for future work with a view to assuring the protection of works in the public domain.[219]

(h) *Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties*

In accordance with the recommendations of the Third Committee of Governmental Experts on the Double Taxation of Copyright Royalties Remitted from one Country to Another (Paris, 19-30 June 1978) and the decision adopted by the General Conference at its twentieth session, an International Conference of States on the Double Taxation of Copyright Royalties Remitted from one Country to Another, convened jointly by the Directors-General of UNESCO and WIPO, was held in Madrid from 26 November to 13 December 1979. The Conference adopted the Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, together with a model bilateral agreement for the implementation of the Convention. It also elaborated an additional protocol to extend the provisions of the Multilateral Convention to "neighbouring rights" of copyright. As evident from the title, the Convention is designed to avoid double taxation of copyright royalties, i.e. the taxing of copyright royalties in both the country where a copyrighted work is used and in the one where the author of such work resides.[220]

The Convention shall be deposited with the Secretary-General of the United Nations and shall enter into force three months after the deposit of the tenth instrument of ratification, acceptance or accession.

(i) *International Copyright Information Centre*

In the context of its over-all activities in the field of facilitating access of developing countries to protected works and to serve as a link between publishers and copyright holders in various countries, both developed and developing, the International Copyright Information Centre brought out a number of publications during the year 1979, namely, (i) *Practical Aspects of the Use by*

[218] See report of the Working Group, UNESCO/WIPO/WG.1/CWA/4.
[219] See report of the Working Group, PRS/CPY/DPR/3.
[220] See report of the General Rapporteur, UNESCO/WIPO/CONFDT/15.

Developing Countries of Educational and Scientific Works and Works of Cultural Promotion; (ii) *Model Contract for the Publication of a Reproduction of an Edition of a Work*; (iii) *Model Contract for the Publication of the Translation of a Work*; (iv) *Model contract for the Licensing of Rights in a Work for the Purpose of Sound Recording*; (v) *Model Contract for the Licensing of Motion-Picture Rights*; and (vi) *Model Statute for a National Copyright Information Centre*. It has also compiled the second list of national and regional bibliographies published in Member States as well as a list of children's books whose copyright might be transferred on special terms to publishers in developing countries. Besides the above, the Centre has been regularly bringing out its information bulletins.

4. HUMAN RIGHTS

(a) *Contribution of UNESCO to the Implementation of the International Covenants on Human Rights*

1. At the conclusion of the debate at its 107th session, the Executive Board requested the Committee on Conventions and Recommendations, in decision 107 EX/4.4.1, to study the legal, administrative and practical problems relating to UNESCO's contribution to the implementation of the two Covenants and of the Optional Protocol, which might arise particularly as a result of the fact that the Committee was also able to exercise the functions provided for in decision 104 EX/3.3. The Board also requested the Committee to submit appropriate proposals to it at its 109th session.

2. At its September 1979 session, the Committee on Conventions and Recommendations considered document 108 EX/CR/SS.1, prepared by the Secretariat in order to assist it in studying the issue on the basis of the most recent information and decided:

(i) To request the Secretariat to prepare a draft report for submission to it at its next session;

(ii) To designate, at its next session, a rapporteur who would be entrusted with preparing the final text of the report for submission by the Committee to the Executive Board at its 109th session pursuant to decision 107 EX/4.4.1.

3. Pursuant to that decision, which the Executive Board took note of on 17 October 1979, said draft report was submitted to the Committee on Conventions and Recommendations at its April 1980 session.[221]

4. Furthermore, UNESCO has regularly invited member States to ratify the Covenants and to take the necessary steps for their application (see, for example, resolution 10.1, paragraph 1 (*d*), adopted by the General Conference of UNESCO at its twentieth session).

5. In addition, the Organization had contributed to the dissemination of information on the Covenants, particularly by encouraging education concerning human rights (see Approved Programme and Budget for 1979-1980, theme 3/1.5 and 2.3/04).

(b) *Consideration of Cases and Issues Involving the Exercise of Human Rights in Areas within UNESCO's Field of Competence*

6. The Committee on Conventions and Recommendations of the Executive Board met in private session at UNESCO headquarters from 13 to 27 April and from 10 to 18 September 1979, to consider the communications which had been transmitted to it pursuant to decisions 77 EX/8.3 and 104 EX/3.3 of the Executive Board.

7. At its April 1979 meeting, the Committee considered 13 communications transmitted pursuant to decision 77 EX/8.3; of these 9 were kept on the agenda, 1 was dismissed and 3 were disposed of. As to the 39 communications transmitted to the Committee for a decision on their admissibility, pursuant to decision 104 EX/3.3, 15 were found to be inadmissible, 6 were found to be admissible, consideration was suspended in the case of 15 and 3 were postponed to the next session of the Committee. Finally, the two communications which had already been found

[221] Document 109 EX/CR/HR/1.

admissible at the Committee's previous session were kept on the agenda for consideration at the September 1979 session. The report of the Committee concerning that session was submitted to the Executive Board at its 107th session.[222]

8. At its September 1979 meeting, before considering the items on its agenda, the Committee first considered the procedural matters which had arisen in relation to the implementation of decision 104 EX/3.3. In addition, the Committee took decisions concerning communications relating to disappearances, the co-existence of two procedures, the possibility of derogating from human rights in the event of exceptional public danger which threatened a nation's existence, the deadline for the transmission of supplementary information to Governments concerned and the persons to whom communications should be addressed.

9. On that occasion, the Committee considered 10 communications transmitted pursuant to decision 77 EX/8.3; of these 2 were dropped, 1 was found to be inadmissible and consideration of 2 was suspended. Finally, the Committee applied to 5 communications the special procedure concerning communications relating to disappearances, adopted on 10 September 1979.

10. Of the 43 communications transmitted to the Committee pursuant to decision 104 EX/3.3, 16 were kept on the agenda, 4 were postponed to the next session, 1 was dropped, 7 were found to be admissible, 14 were found to be inadmissible and 1 was settled. In that connexion, it must be pointed out that, in most cases, the reason that communications were found inadmissible was that they did not reveal a link between the alleged violation and UNESCO's field of competence and therefore did not meet the requirements of paragraph 14 (*a*) (iii) of decision 104 EX/3.3.

11. The Committee also considered the substance of 8 communications, 2 of which had been found admissible at the September 1978 session and 6 of which had been found admissible at the April 1979 session. It should be noted that the special procedure concerning communications relating to disappearances was applied to 5 of those communications.

12. The report of the Committee on Conventions and Recommendations on that session was submitted to the Executive Board at its 108th session.[223]

(c) *Activities to Combat Racial Discrimination*

13. In 1979, UNESCO's standard-setting activities aimed at combatting racial discrimination, concerned, for the most part, the Organization's efforts to implement its three principal instruments, namely:

The Convention against Discrimination in Education;

The Declaration on Race and Racial Prejudice;

The Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, *Apartheid* and Incitement to War.

14. So far as the Convention is concerned, the task was mainly one of continuing the efforts to implement the Convention; these efforts go back a number of years. Accordingly, a reminder was sent, on 21 February 1979, to the 80 member States of the Organization which had not yet submitted a report in reply to the third questionnaire sent to them in January 1975.

15. At its September 1979 meeting, the Committee on Conventions and Recommendations considered the reports which member States had submitted in response to that letter and the summary report prepared by the Secretariat on the action taken in implementation of resolution 1/1.1/2 which the General Conference adopted at its twentieth session. The report of the Committee, together with the comments from the Executive Board on the subject, will be submitted to the General Conference at its twenty-first session.

[222] Document 107 EX/PRIV.31.
[223] Document 108 EX/PRIV.28.

16. With regard to the two recently adopted Declarations mentioned above, UNESCO's main concern was to start the implementation process moving. Accordingly, the Secretariat prepared a questionnaire, concerning the implementation of the Declaration on Race and Racial Prejudice, which will be submitted to States in order to collect the relevant information.

17. It should be recalled that the Declaration on Race and Racial Prejudice which the General Conference of UNESCO adopted by consensus and by acclamation on 27 November 1979, for the first time, provided the international community with a text which, although not legally binding, represented a moral and ethical commitment covering all aspects of the problem — biological, sociological, cultural, economic and political.

18. Three articles of the said Declaration deserve particular mention: article 1 which affirms for the first time, at the international level, that all individuals and groups have a right to be different; article 3 which reaffirms the right to development as a consequence of the requirements of a just international order and article 9, which, for the first time, recognizes the principle of international responsibility of States for any form of racial discrimination.

19. With regard to the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, *Apartheid* and Incitement to War, UNESCO has undertaken a survey among the national committees to determine whether and to what extent the said Declaration has been translated into the national language or languages. In addition, consultations were organized at UNESCO headquarters, from 7 to 9 May 1979, on means of promoting the teaching of the principles laid down in the Declaration.[224]

4. INTERNATIONAL CIVIL AVIATION ORGANIZATION

1. Consideration of a draft Convention on International Multimodal Transport

At its 22nd session held in Montreal, September-October 1977, the ICAO Assembly decided that the Legal Committee should be requested by the Council, if and when necessary, to study with due priority the implications for international air law conventions of the proposed Convention on International Multimodal Transport of Goods. The twenty-fourth session of the Legal Committee was held in Montreal from 7 to 18 May 1979 and the main agenda item was "Consideration of the draft Convention on International Multimodal Transport" which had been prepared within the framework of the United Nations Conference on Trade and Development (UNCTAD). The terms of reference of the Committee were to study the legal implications of this proposed Convention for international air law conventions and to make comments and recommendations to be presented to the United Nations Conference of Plenipotentiaries convened for considering the draft Convention at Geneva from 12 to 30 November 1979.

The Committee recorded in its report several observations on the possible conflict of existing air law conventions with the draft Convention elaborated in the framework of UNCTAD; some solutions were suggested in the Committee for possible incorporation into the draft Convention. The Committee agreed that the fundamental problems outlined in its report should be resolved by the United Nations Conference with a view to enabling a satisfactory inclusion of the air mode within the scope of the Convention on Multimodal Transport.

The relevant part of the report of the Legal Committee was distributed by UNCTAD as an integral part of the documentation for the United Nations Conference on a Convention on International Multimodal Transport (Geneva, November 1979). The ICAO observer introduced the Committee's report in the plenary of that Conference.

[224] Document CC-79/WS/126.

2. Work programme of the Legal Committee: agenda item 1, part A — legal status of the Aircraft Commander

In establishing its general work programme at its twenty-fourth session held in Montreal from 7 to 18 May 1979, the Legal Committee decided that the item "Legal status of the Aircraft Commander" be given highest priority as item 1 of part A of the general work programme. The Council approved the general work programme of the Legal Committee at its ninety-seventh session in June 1979 and requested the secretariat to prepare a study of the subject matter for presentation to the Council at its ninety-eighth session in November 1979. The secretariat study was then sent to States and international organizations for comments and the Council, on 28 November 1979, decided to establish a Panel of Experts in the operational and legal fields to meet at Montreal from 9 to 22 April 1980. The task of the Panel would be to study the subject "Legal status of the Aircraft Commander".

The terms of reference of the Panel, as approved by the Council, are as follows: (*a*) to study the subject "Legal status of the Aircraft Commander" on the basis of the secretariat study and in the light of the comments by States and international organizations; (*b*) to prepare a list of operational and legal problems related to this subject which, in the opinion of the Panel, require a solution; (*c*) to suggest any specific solutions for further consideration by the appropriate bodies of ICAO.

3. Unlawful interference with international civil aviation and its facilities

The Committee on Unlawful Interference with International Civil Aviation and its Facilities held six meetings during the year 1979. The Committee examined proposals from States and international organizations for the amendment of specifications in annex 17 (Security — Safeguarding international aviation against acts of unlawful interference).

As recommended by the Committee, the Council, on 7 December 1979, requested the Secretary-General to obtain the views and comments of Contracting States and interested international organizations on the proposed amendments to annex 17.

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5. UNIVERSAL POSTAL UNION

A. General questions

1. *Expulsion of the Republic of South Africa from UPU (resolution C 6)*

Having taken into account the sanctions adopted previously against South Africa (Expulsion of the Republic of South Africa from the 17th Congress of UPU, and all other Congresses and meetings of the Universal Postal Union — resolution C 2 of the Lausanne Congress) and the persistence of that country in its policy of *apartheid*, the 1979 Rio de Janeiro Congress expelled the Republic of South Africa from the Union.

2. *Participation of the League of Arab States in meetings of UPU (resolution C 7)*

Congress decided to admit the League of Arab States to participate as an observer in the work of the 18th Congress and in all future meetings of UPU bodies, as had been done by the previous Congress for the Organization of African Unity.

3. *Repayment of advances made to UPU by the Government of the Swiss Confederation (resolution C 17)*

Congress adopted a new system of financing of the UPU. From 1981, Switzerland will no longer make cash advances as it has done for more than 100 years. UPU will apply the pre-payment

system in force in other specialized agencies. At the same time, Congress adopted a resolution on the question of repaying Switzerland the advances made before the entry into force of the new system. This repayment will be spread over 10 years, in other words, up to 1990.

4. *Study concerning the Monitoring Authority (resolution C 88)*

Having adopted a new system of financing of the Union and having taken note of the services which Switzerland would continue to provide under this new policy, Congress instructed the Executive Council to study, in consultation with the Swiss Government, the role of the Monitoring Authority after introduction of the new financing system and to submit proposals in that regard to the 1984 Congress.

5. *Organization, operation and methods of work of the Executive Council and division of responsibilities between the Executive Council and CCPS (resolution C 44)*

Acting on the basic assumption that UPU should ensure that its organs operate with maximum efficiency, Congress decided to entrust the Executive Council with a study of the organization, operation, methods of work and responsibilities of that body and its relations with the other organs of UPU.

At the same time, the Executive Council decided to undertake also a study for the same purposes, of the organization, operation and methods of work of Congress.

6. *Conditions of service of elected officials (resolution C 51)*

Congress decided to authorize the Executive Council to adopt a resolution establishing the remuneration and other conditions of service of elected officials, in the light of the principles adopted in the United Nations common system and taking into account the practice followed in the other specialized agencies.

7. *Arrears in contributions (resolution C 89)*

Congress requested the Executive Council to carry out a study on the problem of arrears, taking into account the practice of other specialized agencies.

8. *Possible amendment of the UN/UPU Agreements (resolution C 91)*

Taking account of the United Nations study on the strengthening of the Organization's role, Congress requested the Executive Council, as appropriate and useful to the Union's interests, to negotiate amendments to the UN/UPU Agreements or to negotiate the conclusion of an additional agreement.

9. *Renewal of the terms of office of the Director-General and Deputy Director-General of the International Bureau (decision C 98)*

Congress renewed the term of office of Mr. Mohamed Ibrahim Sobhi, Director-General of the International Bureau of the Universal Postal Union, and of Mr. Thomas Scott, Deputy Director-General.

10. *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies (decision C 99)*

Congress approved the conclusions in the report of the Director-General of the International Bureau concerning the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies. It recommended that the practice hitherto followed should be continued with a view to solving the problem of decolonization within the limits of its competence.

11. *Introduction of the German, Chinese, Portuguese and Russian languages for the publication of documents (resolution C 106)*

Congress decided that the Union should meet part of the costs of reproduction of documents in the four languages, up to an annual amount of 50,000 Swiss francs for each language group.

12. *Memorandum on the role of the post as a factor of economic, social and cultural development (decision C 107)*

Congress decided that the memorandum on the role of the post as a factor of economic, social and cultural development would be brought up to date on the basis of the text adopted for the initial publication and distributed to postal administrations.

B. International postal questions

13. *Illegal issue of postage stamps (resolution C 5)*

Congress decided, on the basis of the Acts of the Union, to declare illegal and invalid postage stamps issued, or to be issued, by the so-called "Turkish Cypriot Postal Administration" of the so-called "Turkish Federate State of Cyprus", and to request the International Bureau of the UPU to ask countries members of the Union to refuse to handle any communication bearing illegal stamps issued, or to be issued, by the so-called "Turkish Cypriot Postal Administration" of the so-called "Turkish Federate State of Cyprus".

14. *Safety of personnel required to handle packages thought to be dangerous (letter bombs) (recommendation C 76)*

Congress recommended that postal administrations should institute all possible means of protection to ensure the safety of postal personnel required to handle packages thought to be dangerous (permanent liaison with the competent authorities of their countries, adaptation of their national legislation so as to authorize operations for detecting letter bombs, etc.). Congress also requested the International Bureau to inform all postal administrations of member countries without delay of discoveries of letter bombs, and to send them any appropriate information on the matter.

15. *Future of postal services (resolution C 82)*

Congress decided to request the Consultative Council for Postal Studies to consider, as its main task, and in a co-ordinated manner, the various aspects of future postal developments, and to draw the attention of postal administrations to the need for the postal service to follow closely the development of various forms of electronic mail as part of its regular duties.

16. *Choice of postage stamp subjects (recommendation C 93)*

Considering that the issue of postage stamps should take place in the spirit of the preamble of the Constitution of the Universal Postal Union, Congress recommends that postal administrations should, when issuing postage stamps, choose subjects capable of contributing to the mutual understanding of peoples, to dissemination of culture and, generally, to the strengthening of international links of friendship.

C. Technical assistance

17. *Cooperation between the Universal Postal Union and the International Savings Bank Institute (resolution C 19)*

With a view to closer co-operation between the Institute and the postal savings banks of some developing countries, Congress invited the Director-General of the International Bureau of UPU to make the necessary contacts and to study possible forms of co-operation between the Institute and UPU. The Bureau also proposed, where appropriate and with the approval of the Executive Council, specific action to effect such co-operation within the limits of the resources available under the heading of the Union's technical assistance.

18. *Priorities and principles of action of UPU in technical assistance (resolution C 37)*

Congress decided:

(1) To intensify, within the limits of the resources available, the technical assistance activities of UPU within the general context of the new international economic order;

(2) To give priority to the needs of the administrations of the countries regarded by the United Nations as disadvantaged, and to newly independent countries;

(3) To give priority to actions to:

Provide developing regions with means of postal training up to senior levels;

Improve the management of postal services, including use of personnel;

Increase the number of postal establishments and improve the handling and distribution of mail, including both that in rural areas and that covering international relations.

Congress also asked the Executive Council to draw up, on the basis of the priorities thus defined, the broad lines of a policy to strengthen UPU's technical co-operation activities, in the light of UNDP procedures and those of the bilateral aid programmes.

Lastly, Congress invited the Director-General of the International Bureau to continue his efforts to develop technical assistance activities within the framework of the principles drawn up by Congress and the guidelines laid down by the Executive Council, while integrating them as far as possible within the UNDP framework.

19. *Financing of UPU technical assistance activities (resolution C 38)*

Congress decided:

(1) To draw the particular attention of the UNDP to the improved opportunities for financing of UPU's activities at the national or multinational level to promote postal development;

(2) To appeal to countries for an appreciable increase in the supplementary resources needed for technical assistance;

(3) To increase by 50 per cent the allocations in the Union's annual budget for consultants' missions for technical co-operation.

It recommended:

(1) To all countries that more of them should contribute to the Special Fund, on the basis of more than one contribution a year, and in amounts in proportion both to their capacity to pay and the needs to be met;

(2) To the developed countries in particular:

(*a*) To make additional efforts to finance certain projects, indicated by UPU as having priority, on the basis of bilateral or multi-bilateral technical assistance;

(*b*) To make approaches to their Governments with a view to obtaining allocation of part of the sums allotted to technical co-operation to their administrations, so that they can provide direct assistance to the postal services of the developing countries;

(3) To the developing countries:

To undertake to meet, when they can, certain costs relating to consultants and fellowships (travel or subsistence costs);

To undertake a campaign addressed to the national authorities and to the public designed to emphasize the importance of the postal services, in order to facilitate postal development.

Congress also asked the Director-General of the International Bureau:

(1) To continue his approaches to national authorities and to UNDP authorities to facilitate fulfilment of the requests made by postal administrations;

(2) To continue his efforts to seek other means of financing;

(3) In order to increase effectiveness, and if necessary with the agreement of the Executive Council, to take steps allowing for more flexible use of UPU resources earmarked for technical assistance, including budgetary allocations for consultants' missions (and particularly the granting of fellowships).

20. *Technical co-operation among developing countries (resolution C 66)*

Congress, conscious of the role assigned by the United Nations in this field to the organizations of the United Nations system and of the assistance anticipated from the developed countries,

urgently drew the attention of the postal administrations of the member countries of the UPU and of the Restricted Unions to this new form of action, the implementation of which demands a genuine will for co-operation.

In addition, it invited:

The postal administrations of the developing countries and the restricted Unions to take all the necessary steps to strengthen TCDC according to the principles laid down by the United Nations;

The postal administrations of the developed countries to assist in every way in the implementation of activities under TCDC through direct financing and/or the payment of contributions to UPU, if necessary into the UPU Special Fund.

Congress also instructed:

The Executive Council to give the requisite attention to the promotion of TCDC, to assign an increasing share of the funds for technical assistance to activities of this nature, and to see that the development of these activities was carried out as effectively as possible; and

The Director-General of the International Bureau:

(1) To continue the action taken to make the postal administrations and the Restricted Unions aware of the importance of TCDC, and to take all appropriate steps to assist those countries and the Restricted Unions to develop activities of this kind;

(2) To continue to collaborate closely with UNDP on TCDC, in particular with regard to the financing of activities undertaken under that head and the evaluation of the progress made in the implementation of the plan of action drawn up by the Buenos Aires Conference.

21. *Establishment at the International Bureau of a permanent unit concerned with third world problems and relations with the Restricted Unions (decision C 79)*

Congress instructed the Consultative Council for Postal Studies to make a study of the establishment of a permanent unit within the International Bureau concerned with third world problems and relations with the Restricted Unions.

22. *Participation of the Restricted Unions in the technical assistance programme (resolution C 90)*

Congress, aware of the assistance which the Restricted Unions can give the Universal Postal Union in carrying out its work at the regional level, instructs the Executive Council:

(1) To study:

(*a*) The technical aspects (programming, implementation and evaluation) and the financial and legal aspects of the problem posed by wider participation of the Restricted Unions in the regional, interregional and multinational technical assistance programmes, in particular:

The conditions that the Restricted Unions must fulfil in order to participate in those programmes;

The conditions for delegating responsibility for certain programmes to the Restricted Unions;

General co-ordination between the UPU, the Restricted Unions and UNDP, particularly from the viewpoint of the consistency of their objectives;

The financial aspects of the foregoing arrangements;

The division of the amounts reimbursed by UNDP as support costs;

(*b*) The relations between the UPU, the Restricted Unions and the regional economic commissions;

(*c*) The safeguarding of the interests of postal administrations which are not members of the Restricted Unions;

(2) To take, within the framework of its terms of reference, such practical steps as may ensue from the conclusions of the study in question;

(3) To report on all these matters to the 19th Congress, if necessary proposing any amendments to the Acts that may seem desirable.

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6. WORLD HEALTH ORGANIZATION

I. CONSTITUTIONAL AND LEGAL DEVELOPMENTS

1. On 11 September 1979, the Seychelles joined the organization through the deposit of an instrument of acceptance following admission to the United Nations, as provided for in articles 4 and 79 of the WHO Constitution. The total membership of the organization has thus risen to 152 members and 2 associate members.

2. The amendments to articles 24 and 25 of the Constitution which had been adopted in 1976 by the Twenty-ninth World Health Assembly and which provide for an increase of the membership of the Executive Board from 30 to 31 were accepted by three member States in 1979, bringing the total number of instruments of acceptance so far deposited to 39; a further 63 acceptances are still required for the attainment of acceptance by two thirds of the members which is necessary for the entry into force of amendments under article 73 of the Constitution.

3. At the Sixty-fourth Session of the Executive Board, in May 1979, a member raised the question whether the membership of the Executive Board could not, by a further amendment to articles 24 and 25, be increased to 32, each member serving for four instead of three years.[225] The Director-General has prepared a report examining this question[226] which will be submitted for consideration to the Executive Board at its Sixty-fifth Session in January 1980.

4. No instrument of acceptance was deposited in 1979 for the amendment to article 7 of the Constitution adopted by the Eighteenth World Health Assembly on 20 May 1965, the number of acceptances so far received thus remaining at 52. As regards any possible application of article 7 as at present in force, the Thirty-second World Health Assembly adopted on 22 May 1979 an amendment to rule 72 of its rules of procedure; this amendment includes suspension of voting privileges and services of a member under article 7 among the important questions requiring a decision made by a two thirds majority of the members present and voting.[227]

5. The amendment to article 74, including an Arabic version of the Constitution among the authentic texts, which had been adopted in 1978, had received up to the end of 1979 seven acceptances.

6. At the Twenty-ninth Session of the Regional Committee for Europe (September 1979) the role of the Regional Committee in the selection of members entitled to designate a person to serve on the Executive Board was discussed. Representatives of European member States were not in favour of the proposal for a system of rotation according to geographical groups or alphabetical order, preferring to leave the possibility of selection open as has been the case up to now. However, the Regional Director was requested to make the necessary arrangements to allow member States to reach a consensus at a session of the Regional Committee before or during each World Health Assembly.[228]

7. The Regional Committee for the Western Pacific reviewed, at its Thirtieth Session (October 1979), the procedures for the nomination of candidates for the post of Regional Director and amended rule 51 of the rules of procedure.[229]

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[225] Document EB64/1979/REC.1, p. 107.

[226] Document EB65/18/Add.2 of 19 September 1979.

[227] See documents WHA32/1979/REC/3, Summary Records of 5th to 8th meetings of Committee B; A32/INF.DOC/5; WHA32/1979/REC/2, Verbatim Record of 12th Plenary Meeting. See also the legal opinion appearing in chap. VI.B of the present *Yearbook* at p. . . .

[228] Resolution EUR/RC 29/R9.

[229] Resolution SEA/RC 32/R8.

8. Under the auspices of the United Nations Environment Programme (UNEP) in collaboration with WHO, an intergovernmental meeting of legal and technical experts from most of the Mediterranean Governments was held, in June 1979, at WHO headquarters in order to consider further the draft Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources based on studies and first drafts prepared in 1976 and 1977 by WHO at the request of UNEP. The meeting reached agreement on all substantive issues of the draft,[230] which aims at the control of pollution from factory waste, municipal sewage and agricultural pesticides and fertilizers. The final adoption and signature of the Protocol is scheduled to take place in 1980 in Athens.

9. Problems relating to patent rights and the protection of the public sector with regard to inventions resulting from co-operation of the organization with research institutions and industry have become more and more acute issues for several major programmes, in particular the Expanded Programme of Research, Development and Research Training in Human Reproduction and the Special Programme for Research and Training in Tropical Diseases. It has therefore been decided that a study outlining the issues involved (with a comparative survey of the practices of other international organizations and major national institutions) and the policy options open to the organization should be submitted to the Thirty-fourth World Health Assembly (1981).

II. HEALTH LEGISLATION

10. WHO is continuing to publish the *International Digest of Health Legislation*, a quarterly journal that appears in English and French editions. Every effort is made to ensure as comprehensive a coverage as possible of national and international legislation on all aspects of health. Many issues also contain comparative surveys or review articles dealing with selected aspects of health legislation. Thus, a survey on "Abortion Laws in Commonwealth Countries" by R.J. Cook and B. M. Dickens was published in volume 30, No. 3, of the *Digest* as well as in the form of an offprint (see also the same authors' article entitled "Development of Commonwealth Abortion Laws" (1979) 28 International Comparative Law Quarterly 424). In a new section entitled "News and views", the *Digest* will seek to cover significant meetings and conferences devoted to health and environmental law.

11. The International Conference on Primary Health Care (held in Alma-Ata, USSR, in September 1978) recognized that reforms in health legislation may well be needed in some countries if the primary health care approach towards "the attainment by all citizens of the world by the year 2000 of a level of health that will permit them to lead a socially and economically productive life" (see resolution WHA30.43 of the Thirtieth World Health Assembly and resolution 34/58 of the United Nations General Assembly) is to be effectively implemented. Indeed, there is increasing evidence (recognized by the WHO Executive Board) that obsolete health legislation may constitute on obstacle to the full realization of the new health doctrines that have been collectively endorsed by WHO member States. In other contexts, the absence of appropriate legislation has been shown to constitute a menace, not only to public health but also to the quality of life, whether in the home, the workplace, the public thoroughfare, or elsewhere.

12. The technical co-operation programmes in health legislation now being devised to implement resolution WHA30.44 (1977) will of course depend on rapid and effective access to all necessary information. WHO is endeavouring to mobilize the experience and information available in the industrialized countries in such a way as to benefit the developing countries that seek to co-operate with each other and with WHO in this sector of health policy.

13. WHO headquarters, as well as the Regional Offices for South-East Asia and the Western Pacific, gave substantial support to the Meeting on Technical Co-operation Among the ASEAN Countries on Drug Legislation, Evaluation and Quality Assurance, held in Jakarta from 26 to 29 November 1979. A Working Group on Legislation concerning Nursing/Midwifery Services and Education was convened in Hamburg from 11 to 14 December 1979 by the WHO Regional Office for Europe, at the invitation of the Government of the Federal Republic of Germany and in

[230] See document UNEP/WG.17.6 of 9 July 1979.

collaboration with the authorities of the City of Hamburg. A number of important recommendations relating to national legislation were formulated by the Joint WHO/UNICEF Meeting on Infant and Young Child Feeding, held in Geneva from 9 to 12 October 1979. The organization was represented at a number of international meetings devoted to health legislation and related issues, including the 5th World Congress on Medical Law (held in Ghent on 19-23 August 1979) and the Combined Medical-Legal Workshop (held in Lilongwe, Malawi, from 8 to 12 October 1979 under the auspices of the Commonwealth secretariat).

7. WORLD BANK

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Signatures and ratifications of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States

As of 1 June 1980, 83 States had signed the Convention,[231] Bangladesh and the Solomon Islands being the most recent signatories. Seventy-nine States had taken the final step toward becoming Contracting States by depositing instruments of ratification, Saudi Arabia being the most recent one.[232]

Disputes submitted to the Centre

On 30 November 1979, the Arbitral Tribunal rendered a unanimous award in the case of *AGIP SPA vs. Government of the People's Republic of Congo.*

The cases of *Société Ltd. Benvenuti and Bonfant SRL vs. Government of the People's Republic of Congo* and *Guadalupe Gas Products Corp. vs. the Federal Military Government of Nigeria* are still pending before the Centre.

8. INTERNATIONAL MONETARY FUND

The following is a summary of the principal legal activities and decisions of the International Monetary Fund in 1979.

MEMBERSHIP, QUOTAS AND PARTICIPATION IN THE SPECIAL DRAWING RIGHTS DEPARTMENT

During 1979, membership in the Fund increased from 138 to 140, and with the deposit by Kuwait of its instrument of participation, all members have become participants in the Special Drawing Rights Department. Effective 11 December 1978, the Board of Governors adopted a resolution approving proposals for increases in members' quotas under the Seventh General Review of Quotas. A general increase in the over-all size of quotas of 50 per cent was proposed for all members except China and Democratic Kampuchea and in addition, selective quota increases were proposed for 11 member countries. A member may consent to an increase in its quota on or any time before 1 November 1980. Members that are participants in the Special Drawing Rights Department

[231] The Convention on the Settlement of Investment Disputes between States and Nationals of Other States is reproduced in the *Juridical Yearbook, 1966*, p. 196.

[232] The list of Contracting States and Other Signatories of the Convention is reproduced in document ICSID/3.

must pay 25 per cent of the increase in their quota under this review in special drawing rights and the balance of the increase in their own currency.

USE OF FUND RESOURCES: CONDITIONALITY

On 2 March 1979, the Executive Board of the Fund completed a review, begun in June 1978, of the conditionality attached to the use of Fund resources in the credit tranches, with the adoption of a decision containing a new set of guidelines. The new guidelines include many of the conclusions that were set forth in the earlier guidelines that were adopted by the Executive Board in 1968, namely (1) stand-by arrangements were not international agreements and therefore contractual language would be avoided in the stand-by arrangements and letters of intent; (2) appropriate consultation clauses would be incorporated in all stand-by arrangements; (3) performance criteria would be limited to those that are necessary to evaluate the implementation of the programme with a view to ensuring the achievement of its objectives; and (4) the use of phasing of purchases under stand-by arrangements would be limited to those arrangements that go beyond the first credit tranche and to purchases beyond this tranche.

The 1979 guidelines, however, include a number of additional considerations. It was recognized that members often tend to hesitate to adopt corrective measures at an early stage in their balance of payments difficulties. In recent years, many countries approached the Fund for support only after their financial situation had already undergone an extreme degree of deterioration. In such cases, the financial programmes have had to be more stringent than they would have been if adjustment measures had been taken earlier. The new guidelines emphasize that the Fund, in its regular consultations under article IV of the Articles of Agreement, and on other occasions, will intensify its efforts to encourage countries to adopt necessary corrective measures that could be supported by the use of the Fund's general resources at an early stage of their balance of payments difficulties. The guidelines also recognize that for countries facing severe balance of payments problems, often of a structural nature, the period of adjustment should extend beyond one year. Therefore, in appropriate cases, stand-by arrangements may be concluded for a period of up to three years if the Fund considers a longer period necessary to enable the member to implement the programme. When helping members to devise adjustment programmes, the Fund will pay due regard to the domestic, social and political objectives, the economic priorities and the circumstances of the member. Performance criteria necessary to evaluate the implementation of the programme and the achievement of its objectives will normally be limited to (1) macroeconomic variables and (2) those criteria necessary to implement specific provisions of the Articles of Agreement or policies adopted under them. Performance criteria may relate to other variables only in exceptional cases when they are essential for the effectiveness of the member's programme, because of their macroeconomic impact.

The new guidelines provide for flexibility in those cases, including in particular programmes extending beyond one year, where a member is not able to establish in advance one or more performance criteria for the duration of the stand-by arrangement. In these instances, provision is made for a review in order to establish the performance criteria for the remaining period.

The guidelines stressed the need for the Managing Director of the Fund to ensure adequate co-ordination in the application of policies relating to the use of the Fund resources in order to maintain the non-discriminatory treatment of members. It was also recognized that the policies of the Fund in this area, as well as in others within its competence, would have to evolve in the light of changing circumstances in the world economy.

CONSULTATIONS WITH MEMBER COUNTRIES

Following a review of procedures for surveillance under article IV in late 1978,[233] the Executive Board decided early in 1979 that there should be provision for reviews of developments involving the exchange rate policies of individual member countries between annual consultations. A

[233] See *Juridical Yearbook, 1978*, p. 87.

supplemental surveillance procedure was established under which the Managing Director is to initiate an informal and confidential discussion with a member whenever he considers that a modification in the member's exchange arrangements or exchange rate policies or the behaviour of the exchange rate of its currency may be important or may have important effects on other members.

Developments relating to special drawing rights

One of the objectives of the Second Amendment of the Articles of Agreement is to promote the SDR as the principal reserve asset in the international monetary system. A number of decisions were taken in 1979 to enhance the yield and characteristics of the SDR and to widen the use of SDRs.

Effective 1 January 1979, allocations of SDRs were resumed, pursuant to a resolution adopted by the Board of Governors on 11 December 1978 approving the proposal of the Managing Director, concurred in by the Executive Board, to increase the volume of SDRs. The proposal was made in accordance with the Managing Director's conclusions that, as required by article XVIII, section 1 (*a*) of the Articles of Agreement, the Fund should seek to meet the long-term global need, as and when it arises, to supplement existing reserve assets in such a manner as to promote the attainment of its purposes. In accordance with the resolution that SDR 4 billion should be allocated as of 1 January each year, 1979, 1980 and 1981, the total amount allocated as of 1 January 1979 was SDR 4,033 million, bringing the cumulative total of SDR allocations to SDR 13.3 billion, about 5 per cent of world official reserves excluding gold.

On 1 January 1979, the interest rate on the SDR was increased from 60 per cent to 80 per cent of the combined market interest rate that is calculated each calendar quarter on the basis of short-term money market rates in the five countries with the largest Fund quotas (France, Germany, Federal Republic of, Japan, United Kingdom and United States) and rounded to the nearest ¼ of 1 per cent. As a result of the decision and the general rise in money market rates, the interest rate on the SDR rose from 4 per cent in the fourth quarter of 1978 to 6 per cent in the first quarter and 6.5 per cent in the second quarter of 1979, making the yield on the SDR more competitive with yields on other international reserve assets.

Also effective 1 January 1979, the Executive Board decided to reduce from 30 per cent to 15 per cent the minimum level of average SDR holdings that participants must maintain in relation to their net cumulative allocations to meet the reconstitution obligations. This requirement must be met for successive five-year periods ending each calendar quarter. The change in the requirement helped to emphasize the reserve asset character of the SDR and enabled participants to maintain lower levels of SDR holdings from day to day, thus increasing their ability to use SDRs without having to reacquire them to meet the reconstitution requirement laid down in the Articles of Agreement.

During the year the Fund took decisions to permit the use of SDRs between participants in the settlement of financial obligations, in loans, and as security for the performance of financial obligations, by means either of a pledge of SDRs or an agreement for transfer and retransfer of SDRs. Under a decision authorizing the use of SDRs in swaps, a participant may transfer SDRs to another participant in exchange for an equivalent amount of currency or another monetary asset other than gold, with an agreement to reverse the exchange at a specified future date and at an exchange rate agreed by the two parties. The Fund also took a decision to authorize the use of SDRs in forward operations, allowing participants to buy and sell SDRs for delivery at a future date, against a currency or another monetary asset other than gold, at an exchange rate agreed between the participants.

There have also been important developments in the use of the SDR as a unit of account and as a currency peg. The SDR, the unit of account for the Fund's General Resources Account and the Trust Fund, has also been widely adopted outside the Fund as a unit of account (or as the basis for a unit of account) for private contracts and international treaties, and by other international and regional organizations, such as the African Development Bank, the Arab Monetary Fund, the Asian Clearing Union, the Economic Community of West African States, the Islamic Development Bank, and the Nordic Investment Bank. SDR-denominated currency deposits are now accepted by BIS and

several major commercial banks, and bonds denominated in SDRs have been issued in the international capital market.

Some Fund member countries have pegged their currency to the SDR by fixing the value of the member's currency in terms of the SDR and then setting the value in terms of other currencies by reference to the SDR value of the other currencies as calculated and published by the Fund.

Extended Fund facility

In 1974, the Fund established an extended facility to provide medium-term assistance to members to meet balance of payments deficits for longer periods and in amounts larger in relation to quotas than under existing tranche policies.

As of the end of the Fund's financial year, 30 April 1979, the total amount committed under the decision on the extended Fund facility approached SDR 2 billion and the Executive Directors decided to review the adequacy of the decision relating to the extended Fund facility. In June 1979 the Executive Board reviewed the decision and decided that no modification should be made to the decision for the time being, but that the functioning of the extended Fund facility should be reviewed again when the possibility of access to the supplementary financing facility came to an end.

In December 1979, the Fund decided to improve the extended facility by increasing the maximum period for making repurchases from 8 to 10 years.

Compensatory financing facility

In 1963 the Fund established the compensatory financing facility to finance deficits arising out of export shortfalls, notably those of primary exporting member countries. In 1979, the Fund reviewed its policies to determine how it could more readily assist members, particularly primary exporters, encountering payments difficulties produced by temporary export shortfalls. It was decided that drawings outstanding under the decision may amount to 100 per cent of the member's quota, provided that requests for drawings which would increase the drawings outstanding under the decision beyond 50 per cent of the member's quota will be met only if the Fund is satisfied that the member has been co-operating with the Fund in an effort to find, where required, appropriate solutions for its balance of payments difficulties. The 1979 decision stipulates that in the calculation of shortfalls, a member's receipts from travel and workers' remittances will be included at the option of the member if, in the opinion of the Fund, adequate data are available.

Whenever the Fund's holdings of a member's currency resulting from a drawing under the decision are reduced by the member's repurchase or otherwise, the member's access to this facility, in accordance with its terms, will be restored *pro tanto*.

In order to implement the Fund's policies in connexion with compensatory financing of export shortfalls, the Fund will be prepared to waive the limit on the Fund's holdings of 200 per cent of quota, where appropriate.

Supplementary financing facility

In August 1977 the Executive Board decided that the Fund should provide supplementary financing in conjunction with the use of the Fund's ordinary resources to members facing serious payments imbalances that are large in relation to their economies and their Fund quotas. This supplementary facility entered into force effective 23 February 1979. By that date, 13 members or institutions had undertaken to make resources available to the Fund to finance purchases by members under the facility. Members avail themselves of these supplementary resources in conjunction with the use of ordinary resources either under a stand-by arrangement (normally of more than one year and possibly up to three years) reaching into the upper credit tranches or under an extended arrangement (usually up to three years). These arrangements are granted on the usual policy conditions, including conditionality, phasing and performance criteria. Holdings resulting from a purchase of supplementary resources are subject to repurchase in equal semi-annual instalments that begin not later than three and one-half years, and are to be completed not later than

seven years, after the purchase. Supplementary financing was used for the first time in May 1979 to finance in part an arrangement under the Fund's extended facility.

General Arrangements to Borrow

The General Arrangements to Borrow (GAB) were originally concluded in 1962 between the Fund and 10 industrial member countries. Subsequently, Switzerland became associated with GAB under a 1964 agreement with the Fund, which had been extended until 23 October 1980.

In March 1979, the Executive Board decided to allow the transfer, under certain terms and conditions, of all or part of claims to repayment to certain GAB participants and the Swiss National Bank. Transfers may be made at any time to a participant in GAB if, at the time of the transfer, it is a member, or the institution of a member, that has a reserve tranche position in the Fund on which it receives remuneration and if the Fund's holdings of the member's currency do not include any balances subject to repurchase. The price for the claim transferred shall be as agreed between the transferor and the transferee. The terms of GAB continue to apply to each transferee that is a participant in GAB, and the claim of the transferee is the same in all respects under GAB as the claim of the transferor. Transfers may also be made at any time to the Swiss National Bank in which case, the provisions of GAB, with some exceptions, shall apply as if the Swiss National Bank were a participant. The transferor of a claim must inform the Fund of the claim that is being transferred, the name of the transferee, the amount of the claim being transferred, the agreed price for the transfer of the claim and the value date of the transfer.

On 24 August 1979, the Executive Board decided to renew the General Arrangements to Borrow, as amended, for a period of five years from 24 October 1980, subject to the modification that, before the date prescribed in GAB, the Fund, after consultation with a participant, may make repayment to the participant in part or in full. The Fund would have the option to make repayment in the participant's currency, or in special drawing rights in an amount that does not increase the participant's holdings of special drawing rights above the limit under article XIX, section 4, of the Articles of Agreement unless the participant agrees to accept special drawing rights above that limit in such repayment or with the agreement of the participant, in other currencies that are actually convertible.

Guidelines for Early Repurchase

On 28 June 1979, the Executive Board took a decision setting forth guidelines[234] for members regarding early repurchase when the balance of payments and reserve position of members improve. The guidelines apply to the Fund's holdings of currency that result from the certain purchases under article V, section 3 of Articles of Agreement and are subject to repurchase under the provisions of the articles and the policies of the Fund.

Substitution Account

The Interim Committee of the Board of Governors on the International Monetary System met on two occasions in 1979 and expressed support for consideration by the Executive Board of a Substitution Account, to be administered by the Fund, that would accept deposits of United States dollars from members of the Fund and certain other official holders in exchange for an equivalent amount of SDR-denominated claims. The Committee concluded that such an Account, if properly designed, could contribute to an improvement of the international monetary system and could constitute a step toward making the SDR the principal reserve asset in the system. The Committee requested the Executive Board to continue to direct attention to designing a Substitution Account and to report to the next meeting of the Interim Committee to be held in April 1980.

[234] For the specific provisions of the Guidelines, see the Fund's Annual Report 1979, pp. 138-139.

Many provisions of the By-Laws and Rules and Regulations of the Fund were amended in 1978 in connexion with the entry into force on 1 April 1978 of the Second Amendment of the articles of Agreement. The N-Rules, Staff Regulations, not included in that over-all revision, were amended on 22 June 1979. A new rule, N-15, was added and provided that appropriate procedures shall be established for the consideration of complaints and grievances of individual persons on the staff of the Fund on matters involving the consistency of actions taken in their individual cases with the regulations governing personnel and their conditions of service.

Toward the implementation of rule N-15, the Managing Director of the Fund appointed an ombudsman, effective 24 July 1979, to have an advisory role in resolving individual grievances that are brought to his attention by individual staff members. Further implementation of rule N-15 was begun in 1979 with preparations for the establishment of a Grievance Committee, consisting of three members, to hear complaints and grievances brought by staff members and to make recommendations to the Managing Director for the settlement of disputes. It is expected that the Grievance Committee will be established in 1980.

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9. WORLD METEOROLOGICAL ORGANIZATION

1. AMENDMENT TO THE WMO CONVENTION

At its eighth session held at Geneva from 30 April to 25 May 1979, the WMO Congress adopted an amendment to Article 13 (*c*) of the WMO Convention raising the number of Directors of Meteorological or Hydrometeorological Services elected to the Executive Committee at each Congress from 14 to 19, thereby increasing the total membership of the Committee from 24 to 29.

2. AMENDMENTS TO THE WMO GENERAL REGULATIONS

The Eighth Congress noted with appreciation the study made by the Executive Committee for possible improvements in the voting and election procedures as requested by resolutions 31(Cg-VI) and 52(Cg-VII). In the light of the result of this study, the Congress decided to retain the present method of electing members of the Executive Committee. It also decided that during elections votes shall be counted in the presence of the constituent body immediately following the vote. The Congress therefore decided to amend General Regulation 60 accordingly.

Congress also decided to amend General Regulations 80, 85 and 92 related to voting and elections.

Congress adopted these amendments by its resolution 51(Cg-VIII).

In addition to amendments in the General Regulations related to voting and elections during sessions, the Congress also examined proposals by the Executive Committee for new and amended General Regulations. In this connexion, the Congress adopted resolution 52(Cg-VIII), the annex to which gives the text of these additional new and amended regulations.

The Congress considered proposals submitted by the People's Republic of China for amendments to the General Regulations to provide for the introduction of the second step in using the Chinese language as an official and working language of the Organization, in conformity with resolution 50(Cg-VII). The Congress approved the proposed second step, comprising the provision of interpreters for the use of the Chinese language in the technical commissions, if so requested, and also publication of the Convention and the General Regulations of the Organization in Chinese. In this connexion, the Congress noted with appreciation the offers made by the delegate of China to provide the Chinese texts of the Convention and the General Regulations. To this end the Congress decided to amend Regulations 115 and 117 of the General Regulations as given in the annex to

resolution 50(Cg-VIII). The Congress further decided to keep in force resolution 50(Cg-VII) except the paragraph "Approves".

The Congress considered the terms of reference of the technical commissions which had been adopted by the Seventh Congress and proposals for amended title and terms of reference of the Commission for Special Applications of Meteorology and Climatology (CoSAMC) were warranted, as well as a minor addition to the terms of reference of the Commission for Hydrology (CHy) arising from Article 2 (*e*) of the Convention. The Congress therefore adopted resolution 53(Cg-VIII), which established the system and terms of reference of the technical commissions for the eighth financial period, and which replaces resolution 51(Cg-VII).

The Congress considered proposals for the amendment of the General Regulations to provide for the adoption of the Arabic language as one of the official and working languages of the Organization. Noting that implementation of the use of the Arabic language by the Organization would be introduced only on a limited scale during the next financial period, the Congress approved these proposals and adopted resolution 54(Cg-VIII) in this connexion.

3. Technical Regulations of WMO

The Eighth Congress also adopted a resolution (4 Cg-VIII) on amendments to the layout and contents of volumes I and III of the Technical Regulations of WMO in which it decided that the amended version of volumes I and III of the Technical Regulations come into force on 1 July 1980.

4. Agreement between WMO and the International Council of Scientific Unions on the World Climate Research Programme

The Eighth Congress also approved the text of a new WMO/ICSU Agreement on the World Climate Research Programme which would enter into force on 1 January 1980. The signing of the WMO/ICSU Agreement (on 23 October 1979 on behalf of WMO and on 16 November 1979 on behalf of ICSU) formally superseded the Agreement on the Global Atmospheric Research Programme (GARP) signed between the aforesaid parties on 10 October 1967.

5. Membership of the Organization

Lesotho became a Member State of the Organization under article 3 (*b*) of the Convention of 2 September 1979, this date being the thirtieth day after the deposit of the instrument of accession to the Convention.

The total membership of the Organization at the end of 1979 comprised 144 States and 6 Territories.

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10. INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

(a) International conferences convened by IMCO in 1979

International Conference on Maritime Search and Rescue, 1979

The Conference was held in Hamburg from 9 to 27 April 1980 and adopted the International Convention on Maritime Search and Rescue, 1979. It adopted also a number of resolutions.

(b) Decisions and other legal activities

During 1979, the Legal Committee considered *inter alia*:

(1) Draft articles for a convention on liability and compensation in connexion with the carriage of noxious and hazardous substances by sea. It is expected that a draft convention will be considered by a diplomatic conference to be convened by IMCO in 1982.

(2) Legal questions arising from the *Amoco Cadiz* disaster, with particular reference to the question of salvage and the right of the coastal State to require information from ships in cases posing the hazard of serious pollution casualties.

(3) Liability and compensation for oil pollution damage, with particular reference to:

(*a*) A possible extension of the provisions of the 1969 Convention on Civil Liability for Oil Pollution Damage to oils not covered by that Convention and

(*b*) Review of the limits of liability and compensation payable under the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

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11. INTERNATIONAL ATOMIC ENERGY AGENCY

1. STATUTE AND MEMBERSHIP OF THE AGENCY; ACTIONS TAKEN BY STATES IN CONNEXION WITH THE STATUTE

The Agency's membership at the end of 1979 stood at 110; no further Instruments of Acceptance were deposited during 1979.

2. LEGAL ACTIVITIES

(a) *International Nuclear Fuel Cycle Evaluation (INFCE)*

In 1979 IAEA continued to participate in the Technical Co-ordination Committee and in all Working Groups and sub-groups established within INFCE and provided secretariat services for the study prior to the Final INFCE Plenary Conference to be held in February 1980. Special attention was given to "institutional arrangements", including undertakings by Governments and private entities to facilitate the efficient and secure functioning of the nuclear fuel cycle.

It was widely agreed that conditions for the establishment of institutional arrangements should include membership on a non-discriminatory basis, the application of IAEA safeguards, adequate levels of physical protection for nuclear materials and facilities, means of dispute settlement, and a clear definition of the rights and obligations of the parties.

(b) *International Spent Fuel Management*

In 1978 the Director-General of IAEA circulated to all Member States a Secretariat Study on the International Management and Storage of Plutonium and Spent Fuel. An Expert Group of International Spent Fuel Management was convened in 1979 to follow up on the spent fuel portion of the Secretariat Study. Its purpose was to examine the potential for international co-operation in spent fuel management and to assist IAEA in defining what role it might play in solving problems created by accumulation of spent fuel. Two meetings of the Expert Group were held in Vienna, attended by representatives from 22 Member States and by observers from two international organizations. Progress was made in discussing the fundamental issues surrounding international spent fuel management and in organizing the direction of study on this topic, which will continue in 1980.

(c) *International Plutonium Storage*

Meetings of the Expert Group on International Plutonium Storage, which is preparing proposals for an international plutonium storage system in implementation of Article XII.A.5 of the IAEA Statute, were held in May and November 1979. The Group made good progress and agreed to continue its work in 1980 by considering drafts of the legal instruments needed to establish a scheme.

(d) *Training courses and advisory services on regulatory matters*

At the invitation of the Government of Turkey and in co-operation with the Turkish Atomic Energy Commission, an Interregional Seminar in Nuclear Law and Safety Regulations was held by IAEA in Istanbul from 10 to 14 September. The Seminar was attended by 34 participants from 12 countries and two international organizations, the International Labour Organisation and IAEA. The programme of lectures and discussions covered various legislative and regulatory aspects of nuclear safety control, reactor licensing, quality assurance, emergency response planning, third party liability and insurance, and nuclear export control.

Advisory services in nuclear law were provided to Indonesia, Malaysia and Yugoslavia in follow-up to earlier assistance received by these countries from IAEA in the elaboration of legislation dealing with nuclear installations and third-party liability for nuclear damage.

An analytical study of regulations governing the transport of radioactive materials at the national and international levels was carried out jointly by IAEA and OECD/NEA. This will be the subject of a joint publication by both organizations.

Concurrently with the adoption of the Draft General Standard for Irradiated Foods and the Draft Code of Practice for the Operation of Radiation Facilities Used for the Treatment of Foods by the Codex Alimentarius Commission for recommendation to the latter's Member States, IAEA published in 1979 in its Legal Series No. 11 *Model Regulations for the Control of and Trade in Irradiated Food*. This had been prepared upon the recommendation of an Advisory Group on International Acceptance of Irradiated Food that was convened jointly by FAO, IAEA and WHO with the participation of the Nuclear Energy Agency of the Organization for Economic Co-operation and Development in 1977.

12. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

The International Fund for Agricultural Development (IFAD) is a specialized agency of the United Nations whose basic purpose is to help developing Member countries to expand their food production, improve nutrition and combat rural poverty. It came into existence on 30 November 1977 with the entry into force of the Agreement Establishing the International Fund for Agricultural Development, which had been adopted on 13 June 1976 by the United Nations Conference on the Establishment of an International Fund for Agricultural Development held in Rome, attended by the plenipotentiaries of 85 States. A total of 127 States were Members of IFAD at the end of 1979, classified into three categories: Category I (industrialized countries), Category II (OPEC members) and Category III (developing countries). Each category has 600 votes in the two governing bodies of IFAD, namely, the Governing Council and the Executive Board. The organization is entrusted with the mobilization of additional resources for financing projects and programmes in its developing Member States designed to expand and improve food production systems and to strengthen related policies and institutions within the framework of national priorities and strategies. In addition, it aims at improving nutritional standards and conditions of life of the poorest section of the population in such countries.

Below is a summary of legal aspects of the structure and activities of the Fund.

GOVERNING BODIES

1. The Governing Council is the principal decision-making organ of IFAD in which each Member State is represented by a Governor. All the powers of IFAD are vested in this body. Being the principal decision-making forum of the organization, it is mandatory for the Council to hold an annual session.[235] The First Annual Session of the Governing Council, which also marked the

[235] Article 6.2 (*d*).

inauguration of the operations of IFAD, was held in Rome, Italy, from 13 to 16 December 1977. Since then, the annual session has been the routine constitutional activity of the organization. Important decisions of the First Annual Session include: (*a*) adoption of the rules of procedure of the Governing Council and of the Executive Board of IFAD; (*b*) election of members and alternate members of the Executive Board; (*c*) adoption of the By-laws for the Conduct of the Business of IFAD and of the Financial Regulations of IFAD; (*d*) approval of the Relationship Agreement between the United Nations and IFAD which conferred the status of a specialized agency upon the organization; (*e*) approval of the Agreement with the Italian Republic for the Provisional Headquarters of IFAD; (*f*) election of Mr. Abdelmuhsin Al-Sudeary as the first President of the Organization; and (*g*) approval of the annex to the Convention on the Privileges and Immunities of the Specialized Agencies.

2. Article 6.5 (*c*) of the Agreement Establishing IFAD makes the Executive Board, consisting of 18 States as the members and 17 States as the alternate members, responsible for the conduct of the general operations of IFAD. It is required to meet as often as the business of IFAD may require. Since the establishment of IFAD, the Board has regularly met once every quarter for a three- to four-day session to consider and approve proposed project financing by IFAD and decide other business of the organization. Until the end of 1979, the Executive Board had held eight regular sessions.

LENDING POLICIES AND CRITERIA

3. In allocating its resources in the form of loans and grants to finance projects and programmes undertaken by its developing Member States and intergovernmental organizations in which such States participate,[236] IFAD is guided by the following priorities:

> " (i) The need to increase food production and to improve the nutritional level of the poorest populations in the poorest food deficit countries;
>
> "(ii) The potential for increasing food production in other developing countries. Likewise, emphasis shall be placed on improving the nutritional level of the poorest populations in these countries and the conditions of their lives."[237]

Within the framework of these priorities, "eligibility for assistance is on the basis of objective economic and social criteria with special emphasis on the needs of the low income countries and their potential for increasing food production, as well as due regard to a fair geographic distribution in the use of such resources".[237]

4. According to Article 7.1 (*e*) of the Agreement Establishing IFAD, financing by IFAD is to be governed by broad policies, criteria and regulations laid down by a two-thirds majority of the total 1,800 votes of the Governing Council. During its Second Annual Session, the Governing Council unanimously adopted a document on "Lending Policies and Criteria" which establishes the following three levels of lending from the resources of IFAD.[238]

(i) Special loans on highly concessional terms, carrying a service charge of 1 per cent annually and a maturity period of 50 years including a grace period of 10 years;

(ii) Loans on intermediate terms, with an interest rate of 4 per cent annually and a maturity period of 20 years including a grace period of five years; and

(iii) Loans on ordinary terms with an interest rate of 8 per cent and a maturity period of 15 to 18 years including a grace period of three years.

5. The lending policies and criteria were adopted by the Governing Council with the following interpretations:[239]

> "(*a*) That country allocations would take account of the distribution of population between countries, and particularly of the distribution of the rural poor;

[236] Article 7.1 (*b*).
[237] Article 7.1 (*d*).
[238] Document IFAD/8/Rev.1, para. 31.
[239] Governing Council, Second Session Report, pp. 4-5.

"(*b*) That special loans on highly concessional terms visualized in paragraph 31 (i) will be provided preferably but not exclusively to countries whose *per capita* income is approximately $300 or less (in 1976 dollars);

"(*c*) That these special loans will not exceed approximately two thirds of the total amount of loans which the Fund may extend."

The Council also directed the Executive Board to interpret and implement these policies and criteria with the necessary flexibility provided for in these policies and to review them at a future date in the light of actual experience.

6. In allocating its resources, IFAD does not seek to develop a pattern of country allocations.[240] The largest portion of its resources is to be made available to the poorest developing countries categorized by IFAD as "food priority countries."[241] In selecting projects for financing, IFAD is also required to take due account of its country criteria and economic viability of projects and to give special attention to the types of activities that can increase the yield of food for consumption within the producing country; the aim is to deliver a major portion of benefits to small farmers and landless peasants.[242].

USE OF SDR

7. In the initial year of its operations, IFAD loans were denominated and repayable in United States dollars. However, fluctuations in the exchange rates between United States dollars and the freely convertible currencies prompted that, to protect the values of loans, they should be insulated from exchange rate fluctuations. Consequently, at its Fourth Session, the Executive Board decided that as of 1 January 1979 all IFAD loans were to be denominated in terms of equivalent of special drawing rights (SDR) of the International Monetary Fund (IMF); similarly, maturities of loans were also to be in terms of equivalent of SDR repayable in a fully convertible currency to be selected by the borrower at the time of loan negotiations from among the five currencies with largest representative weighting in SDR. All charges and interest on loans are also payable in the same currency. In respect of foreign currency expenditures, borrowers withdraw, as a general rule, from IFAD in the currencies in which cost of goods and services has been paid or is payable. The Loan Account is charged with SDR equivalent of the amount withdrawn on the basis of the SDR rates determined by IMF on the date of withdrawal.[243]

LOCAL CURRENCY FINANCING

8. In financing projects IFAD aims at improving the conditions of life of small poor farmers in the recipient countries. In order to promote this goal, its "Lending Policies and Criteria" allow for providing financing which may have a relatively large local cost component.[244] During its Seventh Session, the Executive Board of IFAD discussed the issue of whether or not a ceiling should be set on the amount of financing IFAD could provide in any given project to cover local costs. It was decided that fixing a ceiling for the proportion of local costs which could be financed by IFAD would not be desirable. It was further decided that, depending on the nature of the justification for proposing a given level of such financing, the matter should be decided on a case-by-case basis, but IFAD would in no case provide financing to cover the entire local costs of a project.[245]

TECHNICAL ASSISTANCE

9. Project preparation, in most cases, is an important step leading to project financing by an international financial institution. Many developing countries do not have the necessary expertise

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[240] Lending Policies and Criteria, para. 21.
[241] *Ibid.*, para. 22.
[242] *Ibid.*, para. 26.
[243] IFAD, General Conditions Applicable to Loan and Guarantee Agreements, Article IV.
[244] Lending Policies and Criteria, paras. 36-37.
[245] Executive Board Minutes of the Second Session, para. 20.

and resources to undertake such an activity. In this regard, they need external help in the form of technical assistance. Recognizing this need, the Executive Board of IFAD, during its Third Session, provisionally delegated authority to the President of IFAD to extend funds on preparatory activities directly related to the IFAD lending operations. The Board further decided that technical assistance proposals referred to in the decision which are in excess of $US 400,000 and all other technical assistance proposals should be submitted to it for approval.[246]

10. The Seventh Session of the Executive Board finally confirmed the authority delegated to the President to approve technical assistance for project preparation up to $US 400,000 without seeking prior approval of the Executive Board. The decision requires the President to submit a description of each such technical assistance for the information of the Executive Board at the meeting immediately following approval of the technical assistance request from the recipient. The Board established the following policy regarding the terms under which technical assistance for project preparation would be provided by IFAD:[247]

(*a*) Borrowers normally entitled to highly concessional terms shall have funds for project preparation provided to them as grants;

(*b*) Borrowers which would normally receive loans on intermediate terms shall have funds for project preparation advanced to them on a grant basis with any amounts so advanced to be recovered through the loan if the project materializes and the loan is eventually approved;

(*c*) Borrowers which would normally receive loans on ordinary terms shall have funds for project preparation advanced to them in the form of loans. Each such proposal for technical assistance shall be presented to the Executive Board for consideration and approval.

COMMITMENT AND REPLENISHMENT OF RESOURCES

11. By the end of 1979, the Executive Board had approved loans equivalent to $US 502,219,395 from the resources of IFAD for 33 projects, with additional $US 2,002,000 committed on grant basis as components in loan projects. An amount equivalent to $US 1,369,000 was committed in technical assistance for project preparation in various developing Member States of IFAD as grants. To assist its developing Member States to deal with some of the problems of their agricultural production, the Executive Board approved the provision of technical assistance equivalent to $US 2,962,000 for research and similar activities to be carried out by various regional international research centres.[248] At the present rate of project approvals and the provision of technical assistance, more than three fourths of the IFAD total resources of $US 1,060,807,991[249] consisting of initial contributions of its Members is expected to be committed by the end of 1980.

12. In order to achieve continuity in its operations, the Agreement Establishing IFAD makes it obligatory for the Governing Council to review periodically the adequacy of the resources of IFAD. The first such review is required to be held no later than three years after the commencement of its operations by IFAD.[250] The Third Annual Session of the Governing Council, through unanimous adoption of resolution 14/111, decided that it was necessary and desirable to replenish the resources of IFAD, and invited the Members to make additional contributions to those resources for the three-year period 1981 to 1983. The resolution emphasized that "IFAD's resources for the period 1981-83 are replenished at a level sufficient to provide for an increase in real terms in the level of its operations".

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[246] Executive Board Minutes of the Third Session, paras. 21-22.
[247] Executive Board Minutes of the Seventh Session, para. 18.
[248] IFAD, Annual Report 1979, pp. 80-81
[249] *Ibid.*, p. 79.
[250] Article 4.3.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

Treaties concerning international law concluded under the auspices of the United Nations

1. AGREEMENT GOVERNING THE ACTIVITIES OF STATES ON THE MOON AND OTHER CELESTIAL BODIES, ADOPTED BY THE GENERAL ASSEMBLY ON 5 DECEMBER 1979

The States Parties to this Agreement,

Noting the achievements of States in the exploration and use of the moon and other celestial bodies,

Recognizing that the moon, as a natural satellite of the earth, has an important role to play in the exploration of outer space,

Determined to promote on the basis of equality the further development of co-operation among States in the exploration and use of the moon and other celestial bodies,

Desiring to prevent the moon from becoming an area of international conflict,

Bearing in mind the benefits which may be derived from the exploitation of the natural resources of the moon and other celestial bodies,

Recalling the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,[1] the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space,[2] the Convention on International Liability for Damage Caused by Space Objects,[3] and the Convention on Registration of Objects Launched into Outer Space,[4]

Taking into account the need to define and develop the provisions of these international instruments in relation to the moon and other celestial bodies, having regard to further progress in the exploration and use of outer space,

Have agreed on the following:

Article 1

1. The provisions of this Agreement relating to the moon shall also apply to other celestial bodies within the solar system, other than the earth, except in so far as specific legal norms enter into force with respect to any of these celestial bodies.

2. For the purposes of this Agreement reference to the moon shall include orbits around or other trajectories to or around it.

3. This Agreement does not apply to extraterrestrial materials which reach the surface of the earth by natural means.

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[1] General Assembly resolution 2222 (XXI), annex.
[2] General Assembly resolution 2345 (XXII), annex.
[3] General Assembly resolution 2777 (XXVI), annex.
[4] General Assembly resolution 3235 (XXIX), annex.

Article 2

All activities on the moon, including its exploration and use, shall be carried out in accordance with international law, in particular the Charter of the United Nations, and taking into account the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,[5] adopted by the General Assembly on 24 October 1970, in the interest of maintaining international peace and security and promoting international co-operation and mutual understanding, and with due regard to the corresponding interests of all other States Parties.

Article 3

1. The moon shall be used by all States Parties exclusively for peaceful purposes.

2. Any threat or use of force or any other hostile act or threat of hostile act on the moon is prohibited. It is likewise prohibited to use the moon in order to commit any such act or to engage in any such threat in relation to the earth, the moon, spacecraft, the personnel of spacecraft or man-made space objects.

3. States Parties shall not place in orbit around or other trajectory to or around the moon objects carrying nuclear weapons or any other kinds of weapons of mass destruction or place or use such weapons on or in the moon.

4. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on the moon shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration and use of the moon shall also not be prohibited.

Article 4

1. The exploration and use of the moon shall be the province of all mankind and shall be carried out for the benefit and in the interest of all countries, irrespective of their degree of economic or scientific development. Due regard shall be paid to the interests of present and future generations as well as to the need to promote higher standards of living and conditions of economic and social progress and development in accordance with the Charter of the United Nations.

2. States Parties shall be guided by the principle of co-operation and mutual assistance in all their activities concerning the exploration and use of the moon. International co-operation in pursuance of this Agreement should be as wide as possible and may take place on a multilateral basis, on a bilateral basis or through international intergovernmental organizations.

Article 5

1. States Parties shall inform the Secretary-General of the United Nations as well as the public and the international scientific community, to the greatest extent feasible and practicable, of their activities concerned with the exploration and use of the moon. Information on the time, purposes, locations, orbital parameters and duration shall be given in respect of each mission to the moon as soon as possible after launching, while information on the results of each mission, including scientific results, shall be furnished upon completion of the mission. In the case of a mission lasting more than 60 days, information on conduct of the mission, including any scientific results, shall be given periodically, at 30-day intervals. For missions lasting more than six months, only significant additions to such information need be reported thereafter.

2. If a State Party becomes aware that another State Party plans to operate simultaneously in the same area of or in the same orbit around or trajectory to or around the moon, it shall promptly inform the other State of the timing of and plans for its own operations.

[5] General Assembly resolution 2625 (XXV), annex.

3. In carrying out activities under this Agreement, States Parties shall promptly inform the Secretary-General, as well as the public and the international scientific community, of any phenomena they discover in outer space, including the moon, which could endanger human life or health, as well as of any indication of organic life.

Article 6

1. There shall be freedom of scientific investigation on the moon by all States Parties without discrimination of any kind on the basis of equality and in accordance with international law.

2. In carrying out scientific investigations and in furtherance of the provisions of this Agreement, the States Parties shall have the right to collect on and remove from the moon samples of its mineral and other substances. Such samples shall remain at the disposal of those States Parties which caused them to be collected and may be used by them for scientific purposes. States Parties shall have regard to the desirability of making a portion of such samples available to other interested States Parties and the international scientific community for scientific investigation. States Parties may in the course of scientific investigations also use mineral and other substances of the moon in quantities appropriate for the support of their missions.

3. States Parties agree on the desirability of exchanging scientific and other personnel on expeditions to or installations on the moon to the greatest extent feasible and practicable.

Article 7

1. In exploring and using the moon, States Parties shall take measures to prevent the disruption of the existing balance of its environment, whether by introducing adverse changes in that environment, by its harmful contamination through the introduction of extra-environmental matter or otherwise. States Parties shall also take measures to avoid harmfully affecting the environment of the earth through the introduction of extra-terrestrial matter or otherwise.

2. States Parties shall inform the Secretary-General of the United Nations of the measures being adopted by them in accordance with paragraph 1 of this article and shall also to the maximum extent feasible, notify him in advance of all placements by them of radio-active materials on the moon and of the purposes of such placements.

3. States Parties shall report to other States Parties and to the Secretary-General concerning areas of the moon having special scientific interest in order that, without prejudice to the rights of other States Parties, consideration may be given to the designation of such areas as international scientific preserves for which special protective arrangements are to be agreed upon in consultation with the competent bodies of the United Nations.

Article 8

1. States Parties may pursue their activities in the exploration and use of the moon anywhere on or below its surface, subject to the provisions of this Agreement.

2. For these purposes States Parties may, in particular:

(*a*) Land their space objects on the moon and launch them from the moon;

(*b*) Place their personnel, space vehicles, equipment, facilities, stations and installations anywhere on or below the surface of the moon.

Personnel, space vehicles, equipment, facilities, stations and installations may move or be moved freely over or below the surface of the moon.

3. Activities of States Parties in accordance with paragraphs 1 and 2 of this article shall not interfere with the activities of other States Parties on the moon. Where such interference may occur, the States Parties concerned shall undertake consultations in accordance with article 15, paragraphs 2 and 3, of the Agreement.

Article 9

1. States Parties may establish manned and unmanned stations on the moon. A State Party establishing a station shall use only that area which is required for the needs of the station and shall immediately inform the Secretary-General of the United Nations of the location and purposes of that station. Subsequently, at annual intervals that State shall likewise inform the Secretary-General whether the station continues in use and whether its purposes have changed.

2. Stations shall be installed in such a manner that they do not impede the free access to all areas of the moon of personnel, vehicles and equipment of other States Parties conducting activities on the moon in accordance with the provisions of this Agreement or of article I of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.[1]

Article 10

1. States Parties shall adopt all practicable measures to safeguard the life and health of persons on the moon. For this purpose they shall regard any person on the moon as an astronaut within the meaning of article V of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies and as part of the personnel of a spacecraft within the meaning of the Agreement on the Rescue of Astrounauts, the Return of Astronauts and the Return of Objects Launched into Outer Space.[2]

2. States Parties shall offer shelter in their stations, installations, vehicles and other facilities to persons in distress on the moon.

Article 11

1. The moon and its natural resources are the common heritage of mankind, which finds its expression in the provisions of this Agreement, in particular in paragraph 5 of this article.

2. The moon is not subject to national appropriation by any claim of sovereignty, by means of use or occupation, or by any other means.

3. Neither the surface nor the subsurface of the moon, nor any part thereof or natural resources in place, shall become property of any State, international intergovernmental or non-governmental organizations, national organization or non-governmental entity or of any natural person. The placement of personnel, space vehicles, equipment, facilities, stations and installations on or below the surface of the moon, including structures connected with its surface or subsurface, shall not create a right of ownership over the surface or the subsurface of the moon or any areas thereof. The foregoing provisions are without prejudice to the international régime referred to in paragraph 5 of this article.

4. States Parties have the right to exploration and use of the moon without discrimination of any kind, on the basis of equality and in accordance with international law and the provisions of this Agreement.

5. States Parties to this Agreement hereby undertake to establish an international régime, including appropriate procedures, to govern the exploitation of the natural resources of the moon as such exploitation is about to become feasible. This provision shall be implemented in accordance with article 18 of this Agreement.

6. In order to facilitate the establishment of the international régime referred to in paragraph 5 of this article, States Parties shall inform the Secretary-General of the United Nations as well as the public and the international scientific community, to the greatest extent feasible and practicable, of any natural resources they may discover on the moon.

7. The main purposes of the international régime to be established shall include:

(*a*) The orderly and safe development of the natural resources of the moon;

(*b*) The rational management of those resources;

(*c*) The expansion of opportunities in the use of those resources;

(*d*) An equitable sharing by all States Parties in the benefits derived from those resources, whereby the interests and needs of the developing countries, as well as the efforts of those countries which have contributed either directly or indirectly to the exploration of the moon, shall be given special consideration.

8. All the activities with respect to the natural resources of the moon shall be carried out in a manner compatible with the purposes specified in paragraph 7 of this article and the provisions of article 6, paragraph 2, of this Agreement.

Article 12

1. States Parties shall retain jurisdiction and control over their personnel, space vehicles, equipment, facilities, stations and installations on the moon. The ownership of space vehicles, equipment, facilities, stations and installations shall not be affected by their presence on the moon.

2. Vehicles, installations and equipment or their component parts found in places other than their intended location shall be dealt with in accordance with article 5 of the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space.[2]

3. In the event of an emergency involving a threat to human life, States Parties may use the equipment, vehicles, installations, facilities or supplies of other States Parties on the moon. Prompt notification of such use shall be made to the Secretary-General of the United Nations or the State Party concerned.

Article 13

A State Party which learns of the crash landing, forced landing or other unintended landing on the moon of a space object, or its component parts, that were not launched by it, shall promptly inform the launching State Party and the Secretary-General of the United Nations.

Article 14

1. States Parties to this Agreement shall bear international responsibility for national activities on the moon, whether such activities are carried out by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions of this Agreement. States Parties shall ensure that non-governmental entities under their jurisdiction shall engage in activities on the moon only under the authority and continuing supervision of the appropriate State Party.

2. States Parties recognize that detailed arrangements concerning liability for damage caused on the moon, in addition to the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies[1] and the Convention on International Liability for Damage Caused by Space Objects[3] may become necessary as a result of more extensive activities on the moon. Any such arrangements shall be elaborated in accordance with the procedure provided for in article 18 of this Agreement.

Article 15

1. Each State Party may assure itself that the activities of other States Parties in the exploration and use of the moon are compatible with the provisions of this Agreement. To this end, all space vehicles, equipment, facilities, stations and installations on the moon shall be open to other States Parties. Such States Parties shall give reasonable advance notice of a projected visit, in order that appropriate consultations may be held and that maximum precautions may be taken to assure safety and to avoid interference with normal operations in the facility to be visited. In pursuance of this article, any State Party may act on its own behalf or with the full or partial assistance of any other State Party or through appropriate international procedures within the framework of the United Nations and in accordance with the Charter.

2. A State Party which has reason to believe that another State Party is not fulfilling the obligations incumbent upon it pursuant to this agreement or that another State Party is interfering with the right which the former State has under this Agreement may request consultations with that State Party. A State Party receiving such a request shall enter into such consultations without delay. Any other State Party which requests to do so shall be entitled to take part in the consultations. Each State Party participating in such consultations shall seek a mutually acceptable resolution of any controversy and shall bear in mind the rights and interests of all States Parties. The Secretary-General of the United Nations shall be informed of the results of the consultations and shall transmit the information received to all States Parties concerned.

3. If the consultations do not lead to a mutually acceptable settlement which has due regard for the rights and interests of all States Parties, the parties concerned shall take all measures to settle the dispute by other peaceful means of their choice appropriate to the circumstances and the nature of the dispute. If difficulties arise in connexion with the opening of consultations or if consultations do not lead to a mutually acceptable settlement, any State Party may seek the assistance of the Secretary-General, without seeking the consent of any other State Party concerned, in order to resolve the controversy. A State Party which does not maintain diplomatic relations with another State Party concerned shall participate in such consultations, at its choice, either itself or through another State Party or the Secretary-General as intermediary.

Article 16

With the exception of articles 17 to 21, references in this Agreement to States shall be deemed to apply to any international intergovernmental organization which conducts space activities if the organization declares its acceptance of the rights and obligations provided for in this Agreement and if a majority of the States members of the organization are States Parties to this Agreement and to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.[1] States members of any such organization which are States Parties to this Agreement shall take all appropriate steps to ensure that the organization makes a declaration in accordance with the provisions of this article.

Article 17

Any State Party to this agreement may propose amendments to the Agreement. Amendments shall enter into force for each State Party to the Agreement accepting the amendments upon their acceptance by a majority of the States Parties to the Agreement and thereafter for each remaining State Party to the Agreement on the date of acceptance by it.

Article 18

Ten years after the entry into force of this Agreement, the question of the review of the Agreement shall be included in the provisional agenda of the General Assembly of the United Nations in order to consider, in the light of past application of the Agreement, whether it requires revision. However, at any time after the Agreement has been in force for five years, the Secretary-General of the United Nations, as depository, shall, at the request of one third of the States Parties to the Agreement and with the concurrence of the majority of the States Parties, convene a conference of the States Parties to review this Agreement. A review conference shall also consider the question of the implementation of the provisions of article 11, paragraph 5, on the basis of the principle referred to in paragraph 1 of that article and taking into account in particular any relevant technological developments.

Article 19

1. This Agreement shall be open for signature by all States at United Nations Headquarters in New York.

2. This Agreement shall be subject to ratification by signatory States. Any State which does not sign this Agreement before its entry into force in accordance with paragraph 3 of this article may

accede to it at any time. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. This Agreement shall enter into force on the thirtieth day following the date of deposit of the fifth instrument of ratification.

4. For each State depositing its instrument of ratification or accession after the entry into force of this Agreement, it shall enter into force on the thirtieth day following the date of deposit of any such instrument.

5. The Secretary-General shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession to this Agreement, the date of its entry into force and other notices.

Article 20

Any State Party to this Agreement may give notice of its withdrawal from the Agreement one year after its entry into force by written notification to the Secretary-General of the United Nations. Such withdrawal shall take effect one year from the date of receipt of this notification.

Article 21

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all signatory and acceding States.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this agreement opened for signature at New York on.....[6]

2. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, ADOPTED BY THE GENERAL ASSEMBLY ON 18 DECEMBER 1979

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights[7] affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States parties to the International Covenants on Human Rights[8] have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the

[6] The Agreement was opened for signature on 18 December 1979.
[7] General Assembly resolution 217 A (III).
[8] General Assembly resolution 2200 A (XXI), annex.

prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of *apartheid*, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing or responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women, and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(*a*) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure through law and other appropriate means, the practical realization of this principle;

(*b*) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(*c*) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(*d*) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(*e*) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(*f*) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(*g*) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(*a*) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(*b*) To ensure that family education includes a proper undertstanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all apropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(*a*) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(*b*) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(*c*) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(*a*) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishment of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(*b*) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(*c*) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging co-education and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaption of teaching methods;

(*d*) The same opportunities to benefit from scholarships and other study grants;

(*e*) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(*f*) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(*g*) The same opportunities to participate actively in sports and physical education;

(*h*) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(*a*) The right to work as an inalienable right of all human beings;

(*b*) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(*c*) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(*d*) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(*e*) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(*f*) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(*a*) To prohibit, subject to the imposition of sanctions, dismissal on the ground of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(*b*) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(*c*) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(*d*) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(*a*) The right to family benefits;

(*b*) The right to bank loans, mortgages and other forms of financial credit;

(*c*) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they

participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(*a*) To participate in the elaboration and implementation of development planning at all levels;

(*b*) To have access to adequate health care facilities, including information, counselling and services in family planning;

(*c*) To benefit directly from social security programmes;

(*d*) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;

(*e*) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;

(*f*) To participate in all community activities;

(*g*) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(*h*) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(*a*) The same right to enter into marriage;

(*b*) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(*c*) The same rights and responsibilities during marriage and at its dissolution;

(*d*) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(*e*) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(*f*) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(*g*) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(*h*) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of 23 experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(*a*) Within one year after the entry into force for the State concerned;

(*b*) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(*a*) In the legislation of a State Party; or

(*b*) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

3. INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES, ADOPTED BY THE GENERAL ASSEMBLY ON 17 DECEMBER 1979

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

Recognizing in particular, that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights[9] and the International Covenant on Civil and Political Rights,[10]

Reaffirming the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,[11] as well as in other relevant resolutions of the General Assembly,

Considering that the taking of hostages is an offence of grave concern to the international community and that, in accordance with the provisions of this Convention, any person committing an act of hostage taking shall be either prosecuted or extradited,

Being convinced that it is urgently necessary to develop international co-operation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism,

Have agreed as follows:

Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

(*a*) Attempts to commit an act of hostage-taking, or

(*b*) Participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking likewise commits an offence for the purposes of this Convention.

Article 2

Each State Party shall make the offences set forth in article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

Article 3

1. The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure.

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[9] General Assembly resolution 217 A (III).
[10] General Assembly resolution 2200 A (XXI), annex.
[11] General Assembly resolution 2625 (XXV), annex.

2. If any object which the offender has obtained as a result of the taking of hostages comes into the custody of a State Party, that State Party shall return it as soon as possible to the hostage or the third party referred to in article 1, as the case may be, or to the appropriate authorities thereof.

Article 4

States Parties shall co-operate in the prevention of the offences set forth in article 1, particularly by:

(*a*) Taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;

(*b*) Exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1 which are committed:

(*a*) In its territory or on board a ship or aircraft registered in that State;

(*b*) By any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;

(*c*) In order to compel that State to do or abstain from doing any act; or

(*d*) With respect to a hostage who is a national of that State, if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender is present shall, in accordance with its laws, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. That State Party shall immediately make a preliminary inquiry into the facts.

2. The custody or other measures referred to in paragraph 1 of this article shall be notified without delay directly or through the Secretary-General of the United Nations to:

(*a*) The State where the offence was committed;

(*b*) The State against which compulsion has been directed or attempted;

(*c*) The State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;

(*d*) The State of which the hostage is a national or in the territory of which he has his habitual residence;

(*e*) The State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;

(*f*) The international intergovernmental organization against which compulsion has been directed or attempted;

(*g*) All other States concerned.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

(*a*) To communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

(*b*) To be visited by a representative of that State.

4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State in the territory of which the alleged offender is present, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended.

5. The provisions of paragraphs 3 and 4 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with paragraph 1 (*b*) of article 5 to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States or organizations referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.

Article 7

The State Party where the alleged offender is prosecuted shall, in accordance with its laws, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States concerned and the international intergovernmental organizations concerned.

Article 8

1. The State Party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connexion with any of the offences set forth in article 1 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.

Article 9

1. A request for the extradition of an alleged offender, pursuant to this Convention, shall not be granted if the requested State Party has substantial grounds for believing:

(*a*) That the request for extradition for an offence set forth in article 1 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion; or

(*b*) That the person's position may be prejudiced:

(i) For any of the reasons mentioned in subparagraph (*a*) of this paragraph, or

(ii) For the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.

2. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

Article 10

1. The offences set forth in article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may at its option consider this Convention as the legal basis for exradition in respect of the offences set forth in article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. The offences set forth in article 1 shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 5.

Article 11

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the offences set forth in article 1, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 12

In so far as the Geneva Conventions of 1949 for the protection of war victims[12] or the Protocols Additional to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts, mentioned in article 1, paragraph 4, of Additional Protocol I of 1977,[13] in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Article 13

This Convention shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

Article 14

Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations.

Article 15

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those

[12] United Nations, *Treaty Series*, vol. 75, Nos. 970-973.
[13] A/32/144, annex I.

Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those Treaties.

Article 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 17

1. This Convention is open for signature by all States until 31 December 1980 at United Nations Headquarters in New York.

2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 19

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 20

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on .....[14]

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[14] The Convention was opened for signature on 18 December 1979.

Chapter V

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Decisions of the Administrative Tribunal of the United Nations[1]

1. JUDGEMENT NO. 237 (13 FEBRUARY 1979):[2] POWELL *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application seeking rescission of a bulletin suspending the practice followed by the United Nations up to that time pursuant to a previous bulletin by which the Organization reimbursed national taxes levied on one-third lump sum pension payments — Origin of staff regulation 3.3 (f) on the reimbursement of national taxation in respect of salaries and emoluments paid to the staff of the Organization — Authority of the Secretary-General to issue, for the purpose of applying the Staff Rules and Regulations, circulars which the Tribunal has held to have the same force and effect as the Staff Rules unless inconsistent with the Staff Regulations — Concept of acquired rights — under its Statute the Tribunal is competent to rescind individual decisions but not to rescind erga omnes *a decision which is in the nature of a regulation — Examination at the request of the respondent of the question of the legality of the practice followed by the Organization prior to issuing the bulletin mentioned in the application — Arguments adduced from the fact that staff regulation 3.3 refers only to "salaries and emoluments" and covers only staff members in service — Arguments adduced from the fact that the one-third lump sum pension payment is not subject to staff assessment — Rejection of these arguments*

The applicant requested the rescission of a bulletin bearing the symbol ST/SGB/167 which had suspended, as from 16 July 1978, pending an advisory opinion from the Administrative Tribunal on the question, all reimbursements out of the Tax Equalization Fund with respect to national taxes paid by retired or retiring staff members on one-third lump sum payments received out of the Joint Staff Pension Fund. A subsequent bulletin (ST/SGB/169) had confirmed the aforementioned suspension following the decision of the Administrative Tribunal that it had no competence to entertain a request for an advisory opinion.[3]

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[1] Under article 2 of its Statute, the Administrative Tribunal of the United Nations is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. Article 14 of the Statute states that the competence of the Tribunal may be extended to any specialized agency upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. By the end of 1979, two agreements of general scope, dealing with the non-observance of contracts of employment and of terms of appointment, had been concluded, pursuant to the above provision, with two specialized agencies: the International Civil Aviation Organization and the Inter-Governmental Maritime Consultative Organization. In addition, agreements limited to applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund had been concluded with the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the International Telecommunication Union, the International Civil Aviation Organization, the World Meteorological Organization and the International Atomic Energy Agency.

The Tribunal is open not only to any staff member, even after his employment has ceased, but also to any person who succeeded to the staff member's rights on his death or who can show that he is entitled to rights under any contracts or terms of appointment.

[2] Mr. R. Venkataraman, President; Mme Paul Bastid, Vice-President; Mr. Francisco A. Forteza, Member; Mr. Francis T. P. Plimpton, Vice-President, Alternate Member.

[3] On this point, see *Juridical Yearbook*, 1978, pp. 135 and 136.

The Tribunal first noted that the provisional decision on suspension had been motivated by the fact that questions had been raised concerning the legality of a practice followed by the Organization pursuant to a circular issued on 16 December 1974. Noting that, in addition to the present application, two other applications had been filed by staff members who were still in service, the Tribunal considered that it must examine each application in accordance with its Statute and leave it to the Secretary-General to take the necessary action with a view to the adoption by the appropriate authorities of the measures which might be required in the light of the Tribunal's judgement.

After retracing the history of the system governing the reimbursement of taxes levied on staff of the United Nations, which had culminated in the introduction into the Staff Regulations of regulation 3.3 (*f*),[4] the Tribunal recalled that under Article 97 of the Charter the Secretary-General was the Chief Administrative Officer of the Organization and that, under the Staff Regulations "he shall provide and enforce such staff rules consistent with these principles as he considers necessary". It deduced from that that the Secretary-General had discretion in framing the Staff Rules and in applying the Staff Regulations, and noted that in the exercise of his functions the Secretary-General issued administrative orders and information circulars which the Tribunal had held to have the same force and effect as the Staff Rules unless inconsistent with the Staff Regulations, adding that, in the present case, such a circular had been issued, namely the circular of 16 December 1974.

With respect to the legal effect of that circular, the Tribunal referred to its Judgements No. 89[5] and 195[6] and decided on the basis of those precedents that the circular had created a right which the applicant could claim when he opted for a one-third lump sum payment.

The Tribunal also referred to its Judgement No. 202[7] in which it had explained the meaning of respect for acquired rights in cases other than those in which a contractual stipulation exists:

> "Respect for acquired rights also means that the benefits and advantages accruing to a staff member for services rendered before the entry into force of an amendment cannot be prejudiced. An amendment cannot have an adverse retroactive effect in relation to a staff member, but nothing prevents an amendment to the Staff Rules where the effects of such

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[4] Regulation 3.3:

. . .

(*f*) Where a staff member is subject both to staff assessment under this plan and to national income taxation in respect of the salaries and emoluments paid to him by the United Nations, the Secretary-General is authorized to refund to him the amount of staff assessment collected from him provided that:

(i) The amount of such refund shall in no case exceed the amount of his income taxes paid and payable in respect of his United Nations income;

(ii) If the amount of such income taxes exceeds the amount of staff assessment, the Secretary-General may also pay to the staff member the amount of such excess;

(iii) Payments made in accordance with the provisions of the present regulation shall be charged to the Tax Equalization Fund;

(iv) A payment under the conditions prescribed in the three preceding subparagraphs is authorized in respect of dependency benefits and post adjustments which are not subject to staff assessment but may be subject to national income taxation.

[5] *Judgements of the United Nations Administrative Tribunal*, Numbers 87 to 113 (United Nations publication, Sales No. E.68.X.1, p. 22).

The relevant passage of the Judgement reads as follows:

"Each of the staff members in question was entitled to expect that his individual legal status would be determined on the basis of the interpretation given in that circular, which had been issued by the competent authority and was binding on the latter until properly amended."

"The Tribunal considers that the Respondent is not justified in barring in an individual case the application of the interpretation of the relevant provisions he has given in a circular of general scope".

[6] AT/DEC/195. For a summary of the Judgement, see *Juridical Yearbook*, 1975, p. 118. In this Judgement, the Tribunal was of the view that the document in question enunciated "a new policy . . . and [its purpose was] to bring about a fundamental change in the future conditions of employment of precisely that category of staff into which the applicant fell". The Tribunal considered that that document " . . . created rights for staff members in that category even though they might have been unaware of its existence or of the rights thus created."

[7] AT/DEC/202. For a summary of this Judgement, see *Juridical Yearbook*, 1975, p. 128.

amendment apply only to benefits and advantages accruing through service after the adoption of such amendment (Judgement No. 82, *Puvrez*)".[8]

The Tribunal concluded that this principle prohibited the application of bulletins ST/SGB/167 and 169 and that the right to reimbursement established in the applicant's favour must be respected by the respondent.

The Tribunal observed, however, that it had no competence to rescind *erga omnes* a decision in the nature of a regulation, such as the suspension ordered by the Secretary-General, noting however that the respondent had sought a ruling on the legality and validity of the position taken in 1974 with regard to tax reimbursement on partial commuted lump sum payments. The Tribunal examined that question by reference to the relevant provisions.

It first analysed the contention that regulation 3.3 covered only "salaries and emoluments" and was not applicable to the one-third lump sum payment. In that regard, it had to determine whether, given the relevant provisions of the Pension Fund Regulations and the practices of the Organization, the sum in question partook of the character of the other lump sum payments mentioned in articles 29 (*e*), 30 (*c*), 31 (*c*) (ii) and 32 of the Pension Fund Regulations or of periodic payments of retirement benefits. It noted that the *100 per cent* commuted lump sum payable under articles 29 (*d*) (ii), 29 (*e*), 30 (*c*) and 31 (*c*) (ii), mentioned above, had always been treated as eligible for tax reimbursement and had always systematically been reimbursed for over 30 years. The same practice had been followed in the case of the withdrawal settlement payable under article 32. The Tribunal, while recognizing that partial lump sum withdrawal and full lump sum withdrawal did not have the same implications, stressed that both benefits were payable by the Pension Fund and that there was no legal basis for the difference between a partial lump sum payment and a full lump sum payment. It concluded that the law and practice applicable to full lump sum payments applied with equal force to partial lump sum payments.

In ascertaining whether the partial lump sum payments came within the category of "salaries and emoluments", which alone qualify for tax reimbursement under staff regulation 3.3 (*f*), the Tribunal observed, on the basis of existing documents, that the United Nations Administration had always considered full lump sum withdrawals from the Pension Fund as emoluments of the staff. In addition, it noted that the General Assembly had authorized the partial lump sum withdrawal to enable staff members to meet difficult situations such as reintegration into the national life of their own countries and that, from that point of view, the one-third lump sum payment could also be regarded as a terminal payment which under staff regulation 3.3 (*f*) was eligible for reimbursement.

With respect to the contention that reimbursement was provided only for the benefit of *serving staff members*, the Tribunal held that to be invalid: it noted that tax levied on salaries, terminal payments, lump sum withdrawals and withdrawal settlements from the Pension Fund were refunded to *former staff members* after separation and that in a 1951 document the Administration had clearly recognized that for the purpose of reimbursement of taxes, the term "staff members" also included former staff members.

Turning finally to the contention that entitlement to tax reimbursement arose only where payments made by the Organization were subject both to staff assessment and to national income tax — a condition not met by the one-third lump sum pension payment, on which no staff assessment was levied — the Tribunal sought to determine whether staff regulation 3.3 (*f*) was exhaustive and whether only those items of remuneration mentioned therein were eligible for tax reimbursement. It noted that in practice taxes levied on allowances other than those explicitly mentioned in the subparagraph in question had always been reimbursed even though they were not subject to staff assessment and that the same applied to withdrawal settlements under article 32 of the Pension Fund Regulations, and to the full lump sum payments under articles 29, 30 and 31. It consequently reached the conclusion that the absence of staff assessment did not by itself bar tax reimbursement under staff regulation 3.3 (*f*) and that since national income taxation on full lump sum withdrawals from the Pension Fund had always been reimbursed on the authority of regula-

[8] *Judgements of the United Nations Administrative Tribunal*, Numbers 71 to 96 (United Nations publication, Sales No. E.63.X.1, p. 78).

tion 3.3 (*f*), even though those withdrawals had not been subject to staff assessment, the reimbursement of such taxation on partial lump sum withdrawals from the Pension Fund was likewise legal and justified under that same regulation.

In the light of the above, the Tribunal concluded that the authorization under the information circular of 16 December 1974 to reimburse national taxes levied on partial lump sum pension payments was valid and decided that the applicant was entitled to reimbursement of national income taxation on the one-third lump sum payment of his pension.

2. JUDGEMENT NO. 238 (8 FEBRUARY 1979):[9] CARLSON *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application by a serving staff member requesting the Tribunal, first, to order the rescission of the bulletin referred to in the application which gave rise to Judgement No. 237 and, second, to order the reimbursement of taxes owed in respect of a one-third lump sum pension benefit — Rejection of the first plea for the reasons stated in Judgement No. 237 — Rejection of the second plea as unfounded since the staff member had not yet retired

The applicant, who had been scheduled to retire on 30 September 1977, upon reaching the age of 60, had agreed to an extension of her service for a total of 18 months and was therefore due to retire on 31 March 1979, i.e., after the date of this Judgement. She requested the Tribunal, first, to order the rescission of bulletins ST/SGB/167 and 169, referred to in Judgement No. 237 summarized in subsection 1 above, and secondly, to order the payment of tax reimbursement on partial lump sum commutation of benefits from the United Nations Joint Staff Pension Fund. The Tribunal rejected the applicant's first plea for the reasons stated in Judgement No. 237. With regard to the applicant's second plea, it recalled that same Judgement, in which it had confirmed the validity of the bulletin of 16 December 1974. The Tribunal added that, since the applicant continued at the time of the judgement to be in pay status with the United Nations, she could not, having regard to the relevant provisions of the Administrative Rules of the Pension Fund, claim any vested right to her retirement benefit. In other words, as she had not yet retired, she was not entitled to exercise her option for the one-third lump sum commutation benefit and thus had no grounds for requesting tax reimbursement. With regard to the request for tax reimbursement, the Tribunal held that, since the cause of action had not yet arisen, no decision was called for.

3. JUDGEMENT NO. 239 (13 FEBRUARY 1979):[10] MASIELLO *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

The case is similar to that dealt with in Judgement No. 238.

4. JUDGEMENT NO. 240 (15 MAY 1979):[11] NEWTON *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application by a former staff member of UNRWA seeking the validation for pension purposes of periods of previous service performed at a time when UNRWA staff members were not eligible to be participants in the Pension Fund — Decision of the General Assembly limiting the power to validate such periods of service to the case of staff members still in pay status as at a specific date — Allegations of injustice and discriminatory treatment — The Tribunal has no competence to rule on a decision of the General Assembly, or on the Secretary-General's proposal which served as the basis for such a decision

[9] Mr. R. Venkataraman, President; Mme Paul Bastid, Vice-President; Mr. Francisco A. Forteza, Member; Mr. Francis T. P. Plimpton, Vice-President, Alternate Member.

[10] Mr. R. Venkataraman, President; Mme Paul Bastid, Vice-President; Mr. Francisco A. Forteza, Member; Mr. Francis T. P. Plimpton, Vice-President, Alternate Member.

[11] Mr. R. Venkataraman, President; Mme Paul Bastid, Vice-President; Mr. Endre Ustor, Member; Mr. T. Mutuale, Alternate Member.

The Applicant had served with UNRWA for a period between 1952 and 1957, which he had asked to have validated when, upon being transferred to UNICEF, he became a participant in the Pension Fund. All his efforts to obtain validation of that period of service had, however, been to no avail. In 1975, the Assembly decided, on the proposal of the Secretary-General, that periods of service performed between 1950 and 1960 by certain UNRWA staff members would be validated by the Pension Fund, with the proviso that only staff members "still on the rolls as of 31 December 1975 would be eligible for such coverage".

In considering the case, the Tribunal noted that the applicant claimed to be the victim of inequity and discrimination as a result of the proposal of the Secretary-General referred to above, and requested the Tribunal to correct that "inequity situation" by recommending to the Secretary-General that he take appropriate measures to validate for pension purposes the applicant's service with UNRWA. The Tribunal noted that in the proceedings the applicant had not asserted that he had a right to Pension Fund coverage under the terms of his appointment with UNRWA and that his complaint, although formally attacking an action by the Secretary-General, was actually against the aforementioned decision of the General Assembly.

The Tribunal recalled that in another case with which it had dealt previously (Judgement No. 229),[12] the Administration of UNRWA had considered that the person concerned, notwithstanding his retirement prior to 31 December 1975, was eligible to elect Pension Fund coverage of his pre-1961 service under the said decision of the General Assembly on the ground that on 31 December 1975 he had been serving on the staff of an organ of the United Nations. In the present case, however, the applicant did not contest that on 31 December 1975 he had not been in service with any organ of the United Nations and the precedent referred to above was therefore not applicable.

The Tribunal found that, in the circumstances of the case, it was unable to grant the relief requested by the applicant. Although the General Assembly had acted upon the proposal of the Secretary-General, it remained entirely responsible for its decision in the matter. Moreover, the Secretary-General's proposal was not an administrative decision and hence was not within the Tribunal's competence.

The Tribunal further considered that making proposals to the General Assembly lay within the discretionary power of the Secretary-General and that, while the Tribunal was not precluded from making observations if it considered that legislative acts of the Organization appeared contrary to the general principle of non-discrimination, and while such observations could be considered by the competent authorities as recommendations, the present case did not seem to call for such action, as a decision limiting eligibility for certain advantages to active staff members could not normally be deemed to constitute unlawful discrimination. A retired staff member could not make claim before the Tribunal to benefits which the legislative organ of the Organization saw fit to grant subsequent to his separation from service to staff members still in service. Even if such action was felt by the retired staff member as regrettable or inequitable, he had no legal right to such benefits and in the absence of such right the Tribunal could not espouse his claim.

5. JUDGEMENT NO. 241 (17 MAY 1979):[13] FURST *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting, first, the appointment of a staff member at a given level to fill a post graded at the next higher level and, second, a decision to transfer the applicant, which he contended was a misuse of power that resulted in detriment to him

The applicant contested, first, a decision which he had previously contested unsuccessfully before the Tribunal[14] to appoint him as a staff member at the P-3 level to a post graded P-4/P-5. The

[12] AT/DEC/229. For a summary of the Judgement, see *Juridical Yearbook*, 1977, pp. 154 and 155.

[13] Mr. R. Venkataraman, President; Mr. Francisco A. Forteza, Member; Sir Roger Stevens, Member.

[14] See Judgement No. 134 (AT/DEC/134), reproduced in *Judgements of the United Nations Administrative Tribunal*, Numbers 114 to 166 (United Nations publication, Sales No. E.73.X.2), p. 188, summarized in *Juridical Yearbook*, 1969, p. 191.

applicant adduced as new and conclusive evidence in support of his application the introduction by UNDP in 1973 of a comprehensive and consistent system of classification of Headquarters and field posts and of vacancy notices. The Tribunal stated that it was unable to share the applicant's views as to the relevance of the system of classification to the decision which he contested. It emphasized that the system had been introduced with the intention of defining the qualifications and experience called for in each post; designed as a guide for applicants, the system was not intended to require that posts classified at a certain level could not in any circumstances be occupied by staff members below that level, and it placed no obligation whatever on the Administration to promote automatically any staff member graded lower than the level of the post to which he was appointed. The Tribunal concluded that the appointment of the applicant at the P-3 level in no way contravened the United Nations Staff Regulations or the established practice and involved a valid exercise of authority by the Administration.

The applicant also contested the decision to transfer him to a post of Area Officer in New York in 1975. The applicant contended that, while the Administration had the power to transfer staff members, it abused that power if, as alleged in the present case, it required a staff member to accept a transfer which was demonstrably to his detriment. The Tribunal noted, however, that a UNDP circular of 1968 interpreted staff regulation 1.2 as imposing an obligation on staff members to accept assignments to a specified duty station at a given time, specifying that in all such cases the Administration would take into account all relevant considerations as far as possible. The obligation, in short, was on the staff member but the Administration was ready, at its discretion and allowing for the exigencies of the service, to take his personal situation and wishes into account. The Tribunal did not accept the premise on which the applicant based his argument, namely, that the transfer had been to his detriment because it deprived him of the opportunity for promotion.

The Tribunal, therefore, concluded that both decisions contested by the applicant represented a valid exercise of authority on the part of the respondent and that, with respect to all other matters to which the application related, the respondent had acted throughout in good faith and within his rights.

6. JUDGEMENT NO. 242 (22 MAY 1979):[15] KLEE *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application seeking compensation for the injury suffered by the applicant as the result of a decision depriving him of a legitimate expectancy of extension of his appointment — Determination of the duration of the appointment on which the applicant could reasonably count — Extent to which periods of service completed by the applicant under short-term appointments may be deducted from the anticipated total duration of the appointment for the purposes of assessing compensation

The applicant had been informed on 24 October 1974 that the Executive Director of UNIDO had decided to recommend a two-year extension of his fixed-term appointment which was scheduled to expire on 31 March 1975. That recommendation had been approved by Headquarters. Subsequently, however, UNIDO had reversed its position and the applicant had obtained only two successive six-month extensions. The case had been referred to the Joint Appeals Board, which had recommended payment of a year's salary. However, the Secretary-General decided to grant the applicant an *ex gratia* payment amounting to three months' salary, an amount which, as stated in the text of the decision:

> "was determined according to the formula established by the Administrative Tribunal whereby in cases of legitimate expectancy of extension of fixed-term appointments, the compensation granted is equal to the amount of termination indemnity that would have been payable had the appointment been extended and then terminated forthwith."

The Tribunal, considering the case, noted that by the foregoing reference, the respondent had acknowledged that the applicant had a legitimate expectancy of extension of his appointment. The

[15] Mme Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza, Member; Mr. T. Mutuale, Member; Sir Roger Stevens, Alternate Member.

Tribunal considered, however, that since the respondent claimed to have realized that expectancy by successive extensions of the appointment it must determine the duration of the appointment on which the applicant could reasonably count and whether that expectancy had been realized.

While acknowledging that the memorandum of 24 October 1974 did not have the character of an administrative decision obliging the respondent to maintain the applicant in service until 31 March 1977, the Tribunal noted that the respondent had undertaken to recommend a two-year extension to Headquarters and that that undertaking could only have meant that the respondent was convinced that the agreement of Headquarters would be obtained. It was that conviction and the fact that the applicant had been informed of it that had given the latter grounds for his expectancy that he would be maintained in service for a certain period. It followed that the duration of the appointment on which the applicant could count was that specified by the respondent in the memorandum of 24 October 1974, namely two years. As to the appointments granted to the applicant after 31 March 1975, which represented a total of one year of service, they could not be taken into account to cover 50 per cent of the duration of the expected appointment, since they had been granted in the short-term and in circumstances quite different from those envisaged in the memorandum of 24 October 1974.

With regard to the injury sustained as a result of the premature termination of the contractual bond, the Tribunal noted that the respondent, considering that the applicant had a legitimate expectancy that his appointment would be extended, had deduced from that that the applicant was in the position of a staff member who, according to the earlier judgements of the Tribunal,[16] could "anticipate" the granting of a contract according to "normal practice". In this case, however, the expectancy of extension had been clearly defined and the situation thus differed from those in which the Tribunal had evaluated the compensation according to the "formula" referred to above.

Considering that the reasons invoked by the respondent for not realizing the expectancy created by him were not justified and that the change of position on the respondent's part was not attributable to an external intervention but to the very authorities which had taken the steps that had created the applicant's expectancy, and further considering the exceptional material difficulties which the respondent's conduct had caused the applicant, the Tribunal considered that in addition to the compensation equivalent to one year's salary provided for in the recommendation of the Joint Appeals Board, the applicant should be granted the equivalent of three months' salary.

With regard to the request for compensation for the applicant's inability to claim any pension from the Joint Staff Pension Fund, the Tribunal considered that the applicant's right to a retirement pension could have been affected by a change in personal circumstances and, on the basis of the principle that damages should not be remote or indirect, it rejected the request.

7. JUDGEMENT NO. 243 (23 MAY 1979):[17] JIMENEZ CARILLO *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application requesting compensation for the illness and death of a staff member, attributable, according to the applicant, to the performance of official duties on behalf of the United Nations — Limits of the Tribunal's power of review in such cases — Administrative negligence entailing the responsibility of the respondent in the case

The applicant requested the Tribunal to declare that the illness and subsequent death of her husband, a former technical assistance expert of the United Nations, were directly attributable to the performance of official duties on behalf of the United Nations. The Tribunal, invited to determine whether the illness of the deceased staff member could be attributed to the performance of his official duties and whether as a result the respondent was under an obligation to compensate the

[16] See Judgement No. 132 (AT/DEC/132), reproduced in *Judgements of the United Nations Administrative Tribunal*, Numbers 114 to 166, p. 172, and summarized in *Juridical Yearbook*, 1969, p. 189, and Judgement No. 227 (AT/DEC/227), summarized in *Juridical Yearbook*, 1977, p. 151.

[17] Mme Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza, Member; Sir Roger Stevens, Member.

applicant, recalled that it was not competent to pass judgement on the opinions expressed by medical practitioners in such cases and confined itself to consider whether the respondent's decisions had been taken in accordance with due process.

The Tribunal noted that when the claimant was separated from service, the formality of a medical examination on separation from service as provided for in the Staff Rules had been ignored and that such an examination might have made it possible to avoid a dispute which had continued for 10 years.

With reference to the Secretary-General's decision to deny, in accordance with the recommendation of the Advisory Board on Compensation Claims, the claim for compensation for service-incurred illness resulting in total disability, the Tribunal concluded from the fact that the terminology used in the recommendation in question was similar to that previously used by the Medical Director about the staff member in question that the said recommendation had been based solely on the opinion of the Medical Director.

Moreover, the Tribunal observed that despite the submission by the applicant, in support of a request that the case be reopened under article 9 of appendix D to the Staff Rules, of a medical certificate from the attending physician which provided an explanation different to that previously offered by the Medical Director, the respondent had maintained that, since the said request did not contain any new information, there was no ground for reopening the case, and had not taken any step that might lead to a considered opinion on the validity of the new explanation proposed.

With reference to the conclusions of the medical board convened under article 17 (*b*) of appendix D to the Staff Rules after the death of the applicant, the Tribunal recalled that it did not regard itself as competent to examine and compare the value of the conclusions reached by the members of the Board. It confined itself to noting that the respondent had applied the procedures laid down in appendix D to the Staff Rules, that his decision had been based on the opinion of the majority of the medical board and that the validity of that decision could not be contested.

Considering, however, that the formality of a medical examination on separation from service had not been complied with, that the respondent had failed to take into consideration a medical certificate that might have provided new elements in the case, that there had been considerable delay in convening the medical board referred to earlier and that the 17-month delay between the date of the medical board's report and the date on which the applicant had been informed of the Secretary-General's final decision was excessive, the Tribunal found that those instances of administrative negligence entailed the responsibility of the respondent and awarded the applicant $5,000 as compensation.

8. JUDGEMENT NO. 244 (25 MAY 1979):[18] BERNARD *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting the validity of a termination by mutual consent pursuant to staff regulation 9.1 (a) *and of a deduction from payments due upon separation from service pursuant to staff rule 103.18* (b) *(iii) for the purpose of paying a private debt of the staff member concerned — Proof of consent by a staff member to a termination by mutual agreement — Policy of the Organization with regard to the application of staff rule 103.18* (b) *(iii) — Limits of the Tribunal's power of review with regard to decisions taken pursuant to a provision conferring discretionary authority on the Secretary-General — Question of determining whether the termination indemnity falls under the category of "emoluments" mentioned in staff rule 103.18* (b) *(iii)*

The application raised two questions, namely: (1) was there a valid termination of the applicant's appointment in accordance with staff regulation 9.1 (*a*) ? and (2) was the deduction for third-party indebtedness made by the respondent from the terminal entitlements of the applicant authorized under staff rule 103.18 (*b*) (iii) ?

[18] Mr. R. Venkataraman, President; Mr. Francisco A. Forteza, Member; Mr. Endre Ustor, Member.

The Tribunal first recalled the provisions of the last paragraph of staff regulation 9.1 (*a*), which reads as follows:

> "Finally, the Secretary-General may terminate the appointment of a staff member who holds a permanent appointment, if such action would be in the interest of the good administration of the Organization and in accordance with the standards of the Charter, provided that the action is not contested by the staff member concerned".

It observed that the applicant contended that the decision not to contest a proposed termination must be in writing — a condition which, according to the applicant, was not fulfilled in this case — and that he asserted he had never given his consent, verbally or otherwise. The Tribunal noted that the Staff Regulations and Rules did not stipulate that a written agreement was necessary in the case envisaged; it found that the existence of such an agreement was a question of fact to be determined on the evidence, which could be documentary, oral or circumstantial, and found no authority for the applicant's contention on that point.

After examining the circumstances which had culminated in the separation, the Tribunal found that it was more likely for the applicant to have agreed to a termination with the monetary benefits provided for in such cases than to risk a termination with financial loss. Moreover, the file showed that the applicant had not disputed the termination by mutual agreement when he received the notice of termination and that it was when he discovered that certain deductions had been made from his terminal payments that he changed his mind and sought to go back on his consent. Lastly, certain documents in the file corroborated the respondent's contention that the applicant had expressed his agreement to the termination in writing. The Tribunal therefore held that the applicant had consented to the proposed termination.

Having reached that conclusion, the Tribunal rejected the contention that the applicant remained a staff member, observing that it found no provision for withdrawing consent to a termination by mutual agreement, that once a termination became effective it remained in force unless set aside by a process of law and that furthermore the applicant, having received his terminal entitlements, less the aforementioned deductions, could not logically claim that he remained a staff member.

As to the applicant's contention that his consent to termination had been conditional on his receiving the full termination indemnity without deductions and that, as that condition had not been fulfilled, there could be no termination, the Tribunal considered that in the light of the documents in the file it was baseless.

The applicant also contested the deductions made by the respondent for third-party indebtedness, contending in particular that on the date of separation there had been no valid final judgement for the debt and that consequently staff rule 103.18 could not be invoked. After reviewing the facts of the case, the Tribunal reached the conclusion that on the date when the deductions were made, there was in existence a binding and valid debt certified as such by the legal counsel for the respondent.

After recalling that by virtue of the Convention on the Privileges and Immunities of the United Nations,[19] the United Nations, its property and assets enjoyed immunity from every form of legal process and that it was open to the Organization to expressly waive its immunity, on the understanding, however, that no such waiver of immunity could extend to any measure of execution, and after observing that by virtue of staff regulation 1.8 the immunities and privileges attached to the Organization furnished no excuse to the staff members who enjoyed them for non-performance of their private obligations or failure to observe laws and police regulation and that hence, staff members could not use the United Nations as a shield against payment of their debts to third parties, the Tribunal recalled that according to staff rule 103.18 (*b*) (iii) deductions from salaries, wages and other emoluments could be made "for indebtedness to third parties when any deduction for this purpose is authorized by the Secretary-General".

[19] United Nations, *Treaty Series*, vol. 1, p. 15.

After recalling the policy of the United Nations concerning the application of that rule, which was set forth in a legal opinion dated 6 February 1968,[20] the Tribunal noted that the applicant had not had the court orders against him stayed or overturned through appropriate legal proceedings, and considered that the respondent had been right in regarding the subsisting court orders as binding on the applicant, as the respondent could not get involved in the validity of judgements concerning staff members in their personal capacity. The Tribunal added that staff rule 103.18 (*b*) (iii) conferred discretionary authority upon the Secretary-General and that its competence was limited to the question whether the exercise of discretion was arbitrary or capricious. In the light of the facts, it considered that the Secretary-General had been within his rights in ordering a deduction for the applicant's indebtedness.

Lastly, the applicant contended that the relevant staff rule authorized deductions only from "salaries, wages and other emoluments" and that since the termination indemnity did not fall under any of those categories the rule was inapplicable. The Tribunal noted that the term "emoluments" had not been defined in the Staff Regulations and Rules, but it considered that according to the definitions given in authoritative dictionaries the term "emoluments" included termination indemnities. It added that since under staff regulation 3.3 (*a*) termination indemnities were regarded as emoluments for the purposes of staff assessment, it was also logical to regard them as emoluments for the purposes of deductions for indebtedness to the United Nations or to third parties under staff rule 103.18 (*b*).

In the light of the foregoing, the Tribunal rejected the application.

9. JUDGEMENT NO. 245 (25 MAY 1979):[21] SHAMSEE *v.* UNITED NATIONS JOINT STAFF PENSION BOARD

Application seeking execution of a sequestration order issued by a domestic court with regard to the pension of a former staff member — The Pension Fund enjoys the same immunity from every form of legal process as the United Nations and the waiver of such immunity cannot extend to measures of execution — Risk that in the absence of an appropriate provision in the Pension Fund Regulations, persons receiving pensions from the Pension Fund may use the immunities of the Fund as a shield against performance of their private obligations

The applicant requested the Tribunal to direct the Pension Fund to honour the order of sequestration issued by a United States court and to pay her as receiver the pension due to her former husband, a retired employee of the United Nations.

The Tribunal first observed that although the Convention on the Privileges and Immunities of the United Nations had been concluded before the establishment of the Pension Fund, there seemed to be no doubt that the Fund enjoyed the same immunity from the jurisdiction of domestic courts as the Organization itself. It was true that the assets of the Fund were separate from those of the Organization and that the United Nations was only one of several organizations participating in the Fund and that the Secretary-General of the United Nations was not the chief executive officer of the Fund, but the Fund was nevertheless a subsidiary organ of the General Assembly and according to article 18 of its Regulations its assets were "acquired, deposited and held in the name of the United Nations". Thus a strict interpretation of the relevant instruments led to the conclusion that the Pension Fund was covered by the immunity of the United Nations.

The Tribunal then recalled the terms of article II, section 2, of the Convention on the Privileges and Immunities of the United Nations[22] and stated that since the United States was a party to that

[20] Reproduced in *Juridical Yearbook*, 1968, p. 215.

[21] Mr. R. Venkataraman, President; Mme Paul Bastid, Vice-President; Mr. Endre Ustor, Member.

[22] This provision reads as follows:

"The United Nations, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution."

Convention, the immunity provided for in that provision applied in respect of the jurisdiction of the United States courts. In the light of the conclusion formulated in the preceding paragraph, the provision in question also applied to the Pension Fund, so that on the one hand, the immunity from legal process against the Fund could be waived, and on the other, such waiver could not extend to any measure of execution.

The application, therefore, obviously ran counter to the basic rule embodied in article II, section 2, of the Convention, which forbade the waiver of immunity from legal process for the purpose of execution of decisions of local courts. The Tribunal concluded that the Pension Fund was not bound to honour the sequestration order of a United States court.

The Tribunal then examined the extent of the privileges and immunities of United Nations staff members, whether in service or retired, in respect of their obligations to third parties. It recalled the provisions of article V, section 20, of the Convention and of staff regulation 1.8, which made it clear that staff members could not use their privileges and immunities as a shield against performance of their private obligations or payment of their debts to third parties. It also recalled staff rule 103.18 (*b*) (iii), which permitted deductions from salaries, wages and other emoluments for the purpose of indebtedness to third parties.

The Tribunal observed that although it was obvious that the privileges and immunities of the United Nations could not serve the purpose of dispensing staff members, even those who had retired, from the fulfilment of their private obligations, such staff members could indirectly benefit unduly from the immunities of the Pension Fund and from the lack of a provision similar to staff rule 103.18 (*b*) (iii) in the Pension Fund regulations. It added that it was for the General Assembly to consider whether, in the light of the present case, it might be desirable to amend the Pension Fund regulations on the lines of the aforementioned staff rule.

Lastly, the Tribunal considered that the objections concerning its competence raised by the respondent were well founded. In particular, it noted that the applicant could not show that she was "entitled to rights under the [Pension Fund] regulations by virtue of the participation in the Fund of a staff member ..." as required under article 49 of the Pension Fund regulations. The applicant contended that she had been appointed receiver and that consequently the Pension Fund was not being asked to make payment to any third party but to the duly appointed receiver of the assets of the very person to whom the Fund owed an obligation. The Tribunal considered that argument unconvincing, since recognition by the Pension Fund of the appointment of a receiver of assets for the purpose of collecting the pension of a staff member would amount to the recognition of a court decision as binding on the Fund and that in view of its immunity from every form of legal process the Fund could not be expected to grant such recognition, the more so since the court order appointing the receiver constituted a "measure of execution."

The Tribunal accordingly rejected the application.

10. JUDGEMENT NO. 246 (2 OCTOBER 1979):[23] FAYEMIWO *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting a decision terminating a regular appointment by virtue of staff regulation 9.1 (c) — Limits of the Tribunal's power of review with regard to such a decision — Allegations of prejudice and procedural defects

The applicant contested a decision terminating his regular appointment by virtue of staff regulation 9.1 (*c*), under which the Secretary-General may at any time terminate an appointment "if, in his opinion, such action would be in the interests of the United Nations".

The Tribunal first observed that it was not open to it to rescind a decision which was within the Secretary-General's discretion, unless it could be shown that the decision to terminate was due to prejudice or other factors extraneous to the staff member's performance or that the applicant had suffered injury as a result of procedural defects. The Tribunal first had to determine whether the

[23] Mr. R. Venkataraman, President; Sir Roger Stevens, Member; Mr. Endre Ustor, Member.

applicant had suffered prejudice based on external factors. In the light of the material contained in the file, it came to the conclusion that given his mixed record, the applicant's contention that the decision to terminate was "based on extraneous factors rather than on an objective and dispassionate analysis of [his] weaknesses and strengths" could not be sustained.

With regard to the alleged procedural defects, the Tribunal first sought to determine whether a special report on the applicant should have been prepared before the termination. In view of the involved and conflicting nature of the instructions concerning the preparation of reports on staff members, the Tribunal felt that the applicant's superiors could not be held to have committed any procedural error in following the instructions of one of the applicable texts and omitting to prepare an interim report on separation. The Tribunal also noted that the applicant had signed his last periodic report only three months before the decision to terminate was taken and that there was no basis for the contention that procedural irregularities had occurred.

The Tribunal considered, however, that the respondent should have made an appraisal of the rebuttal filed by the applicant to his final periodic report and should have afforded him an opportunity to defend himself before taking the termination decision, especially in view of the active role he had played in the Staff Association and the possible allegation of prejudice arising therefrom. While recognizing that the applicant had reduced the possibility of such action by the tactics of evasion adopted by him after he learned of his impending separation, the Tribunal emphasized that it was part of good administration to observe the dictum that justice should not only be done but also be seen to be done.

11. JUDGEMENT NO. 247 (4 OCTOBER 1979):[24] DHAWAN *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application seeking compensation for injury sustained, according to the staff member concerned, as a result of an error committed by the Administration regarding his possible participation in the Joint Staff Pension Fund — Conclusion of the Tribunal that by virtue of the relevant texts, the staff member was entitled to participate in the Fund as an associate participant — Rejection of the contention that the staff member had signed a contract excluding his participation in the Fund because the Organization had agreed to appoint him at a higher step than originally envisaged — Computation of the compensation due — Statement of the reasons for the decision concerning the amount of the compensation, in accordance with article 9, paragraph 1, of the Statute of the Tribunal

The applicant, the widow of a former staff member of UNDP, an Indian national appointed in 1965, claimed that her husband had been wrongly deprived of the right to become an associate participant in the United Nations Joint Staff Pension Fund and claimed compensation for the loss she had thus suffered. She contended that the decedent had been led to accept terms of appointment excluding him from participation in the Pension Fund by misrepresentations made through responsible officers authorized by the Organization to negotiate and reach agreement with him on his terms of appointment.

The Tribunal emphasized that the texts applicable at the time showed that when in 1965 the decedent was given an appointment for one year, associate participation in the Pension Fund was the normal condition of service. It further observed that on that date there had no longer been any bar under Indian law to a seconded Indian civil servant joining the United Nations Pension Fund and that participation in a national retirement scheme had ceased to be a ground for exclusion from participation in the United Nations Pension Fund. The Tribunal concluded that at the time of his appointment the decedent had been entitled to become an associate participant in the Pension Fund.

The respondent contended that the decedent had signed a contract excluding him from participation in the Fund and that he had voluntarily agreed to that exclusion because the

[24] Mr. R. Venkataraman, President; Mme Paul Bastid, Vice-President; Mr. Francisco A. Forteza, Member.

Organization had agreed to appoint him at a higher step to compensate him for payments he had to make to his national pension scheme. The Tribunal observed that this argument which, it noted in passing, implied recognition of the right of the decedent to become an associate participant in the Pension Fund, was not borne out by the correspondence in the file, which showed that the officers of the respondent had considered that the decedent's participation in the Fund was barred not because he had waived his right to participation but because, according to them, he did not fulfil the requisite conditions because he was contributing to a national pension scheme. The Tribunal also noted that it was clear from the file that the decedent had been appointed at a higher step than originally envisaged in order to provide him with a net salary equivalent to the salary he was drawing from his Government and not as compensation or consideration for waiving his United Nations pension rights.

The Tribunal therefore concluded that since the decedent had accepted terms of appointment excluding him from participation in the Fund on the basis of misrepresentation by the respondent's officers, such terms of appointment did not conclude his rights. In order to compute the amount of compensation due to the applicant because the decedent had been wrongfully deprived of his pension rights, the Tribunal requested computation of the capital value of the benefits which the applicant and her children would have received had the decedent been an associate participant of the Pension Fund on the date of his death. Considering that the action was not for enforcement of obligations under the Pension Fund Regulations but for compensation for administrative failures on the part of the respondent, the Tribunal applied the exchange rate in force on the date of the judgement, and since the amount of compensation had been fixed on that date, denied the applicant's request for interest from the date of the death of the decedent.

Since the amount of compensation fixed exceeded two years' net base salary of the decedent, the Tribunal, in accordance with article 9, paragraph 1, of its Statute, which required that its decision in such cases be accompanied by a statement of reasons, explained that the rule that compensation should not exceed two years' net base salary would not ensure adequate compensation for the loss suffered by the applicant.

12. JUDGEMENT NO. 248 (5 OCTOBER 1979):[25] SEGERSTRÖM *v.* UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST

Application contesting a decision not to renew a fixed-term appointment — Contention that because of the conditions in which the applicant was required to work, the respondent was not able to assess his performance — Contention derived from the clause in the contract of appointment providing for the automatic extension of a one-year appointment to two years after the completion of a six-month probationary period, provided that the applicant's services were satisfactory — Rejection of those contentions

The applicant contested a decision not to renew his fixed-term contract, contending that, in view of the conditions in which he had been required to work, the respondent had not been in a position to assess his performance.

The Tribunal noted, however, that the applicant had been aware, at the time when he was appointed, of the conditions in which he would have to work and had, moreover, never complained about them during his service. Furthermore, six periodic reports containing substantial appraisals of his performance were prepared and the applicant could thus not claim that the respondent had not been able to assess his performance.

The applicant also contended that the respondent had violated the clause of his contract providing that after the completion of six months of satisfactory service his one-year appointment would automatically be extended to two years. The Tribunal thus had to determine whether the applicant had shown six months of satisfactory service. It noted that eight months after the applicant

[25] Mr. R. Venkataraman, President; Mr. T. Mutuale, Alternate Member; Mr. Endre Ustor, Alternate Member; Sir Roger Stevens, Alternate Member.

had taken up his duties, the respondent had informed him that he had decided to extend his probationary period for a further four months. The Tribunal considered that that decision proved that the respondent had not considered the performance of the applicant during his first six months of service to be satisfactory. The applicant contended that in taking that action the respondent had violated the terms of his contract, under which he was entitled to know after six months — in order to plan his life accordingly — whether his service would be extended for a second year or whether he should commence preparations to quit in another six months.

The Tribunal found, however, that there was no provision in the contract according to which it was mandatory for the respondent to give the applicant notice either of termination or of renewal of the appointment after the first six months. It therefore found that the rights of the applicant had not been violated by the mere fact that the probationary period was extended.

With regard to the quality of the applicant's performance, the Tribunal emphasized that it was for the respondent to decide whether the service of the applicant had been satisfactory or not. The fact that almost all the applicant's periodic reports were mediocre, although they had been prepared by different supervisors, disposed of charges of prejudice and the Tribunal could therefore not interfere with the evaluation made by the respondent.

Lastly, the Tribunal, after studying the file, rejected the applicant's allegation that he had never been advised that the result of his further probationary service was unsatisfactory.

In the light of the foregoing, the Tribunal rejected the application.

13. JUDGEMENT NO. 249 (8 OCTOBER 1979):[26] SMITH *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application requesting reimbursement of salary withheld following work stoppages — Unauthorized absence and failure to perform duties remove the basis for payment of salary — Jurisprudence of the Tribunal according to which the resolutions of the General Assembly constitute, as far as the staff members to whom they are applied are concerned, conditions of employment to be taken into account by the Tribunal — Rejection by the Tribunal of arguments based on the doctrine of estoppel — Concept of "unauthorized absence"

The applicant requested the Tribunal to order reimbursement of the amounts withheld from her salary as a result of the work stoppages which took place at Headquarters from 23 January to 12 February 1979. She contended that General Assembly resolution 31/193 B II — which provided that no salary would be paid to staff members in respect of periods of unauthorized absence from their work — did not provide the necessary legal basis for the respondent's decision, that the respondent was estopped by his conduct from legally invoking that resolution, and that in any event the conditions laid down by the resolution had not been met.

The Tribunal noted that the Staff Regulations and Rules contained no provision regarding collective work stoppages in support of claims against the Administration. It noted that the staff had resorted to that means of pressure on various occasions and that such conduct *per se* had not been considered by the respondent as grounds for terminating the employment of the persons concerned or for the imposition of disciplinary measures.

The Tribunal noted, however, that staff regulation 1.2 provided that "the whole time of staff members shall be at the disposal of the Secretary-General" and that according to staff rule 101.2 (*c*) "a staff member shall be required to work beyond the normal tour of duty whenever requested to do so". It was therefore apparent that "work" was the fundamental obligation of staff members, receipt of salary being the essential counterpart to work performed and that unauthorized absence or failure to perform duties removed the basis for payment of salary. However, presence at the place of work and the objective of the work stoppage distinguished those two situations from abandonment of post

[26] Mr. R. Venkataraman, President; Mme Paul Bastid, Vice-President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Francisco A. Forteza, Alternate Member; Mr. Endre Ustor, Alternate Member.

which, according to the Tribunal's jurisprudence,[27] amounted to an admission of separation from service.

In support of her contention that General Assembly resolution 31/193 B II did not provide the necessary legal basis for the contested decision, the applicant first maintained that the resolution in question had been adopted by the General Assembly with a particular situation in mind concerning the General Service staff at Geneva and hence did not have the general applicability attributed to it by the respondent. The Tribunal emphasized, however, that while section I of the resolution indeed concerned a particular situation, section II was a general provision applicable to the entire United Nations staff and that the *travaux préparatoires* confirmed that interpretation because they showed that section II was intended to apply to all duty stations and all levels and hence to the entire United Nations staff. The Tribunal added that as a resolution of the General Assembly, the resolution in question did not have to be submitted in advance to the Staff Committee, for staff regulation 8.2 and staff rule 108.1 envisaged prior consultation with the staff on matters to be regulated by the Secretary-General and on those falling within the competence of the General Assembly.

The applicant also maintained that the resolution in question could not provide a legal basis for the Secretary-General's decision until it had been incorporated into the Staff Regulations; she contended that the respondent had incorporated the text on 31 January 1979 and backdated the decision to 1 January 1979. The Tribunal observed, however, that resolution 31/193 B II, adopted in 1976, had been brought to the attention of the staff through a circular of 17 January 1977; that on 20 December 1978 the General Assembly had adopted a new provision on the question, to be incorporated into the Staff Regulations, and that the latter decision had been brought to the attention of the staff on 22 January 1979. The Tribunal therefore found that whatever the date on which the amended Staff Regulation had been issued, the new provision had been officially brought to the staff's attention, first in 1977 and then in 1979. That being so, and in view of its consistent jurisprudence, according to which resolutions of the General Assembly constituted, as far as the staff members to whom they applied were concerned, conditions of employment to be taken into account by the Tribunal, the latter decided that the resolution in question could be relied upon as a basis for the non-payment of salary in circumstances such as those prevailing in the case, even before being incorporated into the Staff Regulations.

The applicant further contended that the respondent was estopped by his own conduct and by the conduct of his representatives from relying on resolution 31/193 B II and in particular that by failing to take any steps for two years to incorporate that resolution into the Staff Regulations, the respondent had demonstrated his intention not to act on it. The Tribunal observed, however, that if one decided, as it had done, that a resolution of the General Assembly was binding on the applicant, the incorporation of the text in question into the Staff Regulations could not affect the respondent's right to apply the resolution to the applicant. The Tribunal further noted that in the light of the material in the file it was not possible to maintain that the respondent had allowed uncertainty to continue about the possible application of the resolution and it concluded that the arguments which the applicant had sought to draw from the doctrine of estoppel were without foundation.

The Tribunal lastly had to determine what constituted "unauthorized absence". It upheld the interpretation of the respondent, based on provisions concerning staff members' right of association, according to which attendance at "extraordinary general meetings" of the staff could not be described as unauthorized absences. On the other hand, it considered that the objective of the electoral unit meetings was in fact organized work stoppage and that accordingly participation in those meetings could not be considered as authorized absence inasmuch as no relevant provision allowed for their having such an objective.

On the basis of those considerations, the Tribunal rejected the application.

[27] See Judgement No. 220 (AT/DEC/220), summarized in *Juridical Yearbook*, 1977, p. 146.

14. JUDGEMENT NO. 250 (9 OCTOBER 1979):[28] SFORZA-CHRZANOWSKI *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application seeking recognition of the abnormal character of a termination of services following a transfer measure which was allegedly invalid — Limit of the Tribunal's power of review with regard to decisions falling within the discretionary authority of the Administration

The applicant requested the Tribunal to recognize that his fixed-term appointment had been terminated in conditions which were not normal because of pressure brought to bear on him to leave his duty station before the date of expiry of that appointment.

The Tribunal noted that at the same time as it had requested the applicant to leave his duty station, the Administration had decided on measures to enable him to complete his term of appointment. The measure in question was therefore quite clearly an administrative measure which terminated not the contract of service but an assignment to a specific place. Such a measure fell within the discretionary power vested in the Secretary-General by staff regulation 1.2. Consequently, the Administration did not have to justify the merits of the reasons for which it had taken that measure. It was for the applicant to substantiate his allegation that the reasons adduced to justify the measure taken in his case were not valid.

Having regard to the circumstances, the Tribunal found that, in deciding to terminate the applicant's assignment, the Administration had not abused its discretionary power and that consequently the allegation that the attempts to remove the applicant from his post amounted to a form of pressure was not founded. The Tribunal therefore considered that applicant's separation from service, which in any event had occurred on the expiry of his fixed-term appointment, was in no way abnormal, and it rejected the application.

15. JUDGEMENT NO. 251 (11 OCTOBER 1979):[29] NOBLE *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting decisions withholding periodic salary increments — Obligation of the respondent to comply with the provisions of the applicable texts designed to ensure that the staff member's case is given careful consideration

The applicant contested a series of decisions to withhold her periodic salary increments in 1971, 1972, 1973 and 1975.

With regard to the first two decisions, the Tribunal noted that the applicant's periodic report was unfavourable and that the provisions concerning the rebuttal of periodic reports had been meticulously observed by the respondent. On the other hand, he had ignored the requirements of paragraph 8 of administrative instruction ST/AI/115 and of personnel directive PD/5/69 regarding special reports in connexion with the withholding of salary increments; he had also ignored the provision of the aforementioned directive stating that "if a decision is taken to withhold the staff member's salary increment, the staff member must be notified and shown the report evaluating his service". The Tribunal therefore emphasized that the applicant had been deprived of the opportunity of rebutting a special report dealing specifically with those aspects of her unsatisfactory performance which in the respondent's view justified the withholding of her salary increment. While recognizing that the applicant had been given every opportunity to rebut criticisms of her performance in the context of her periodic report, the Tribunal considered that the provisions of paragraph 8 of administrative instruction ST/AI/115 and personnel directive PD/5/69, whose purpose was to ensure that decisions affecting salary increments were given careful and discrete consideration by the Administration and by the staff member concerned and were not, as it were,

[28] Mme Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza, Member; Mr. T. Mutuale, Member; Mr. Endre Ustor, Alternate Member.

[29] Mr. Francis T. P. Plimpton, Vice-President, presiding; Mr. Endre Ustor, Vice-President; Sir Roger Stevens, Member.

lumped together with and lost sight of in the mechanics of dealing with periodic reports. In particular, the Tribunal rejected the respondent's contention that since personnel directive PD/5/69 had not been widely circulated it fell into a different category from other instructions relating to staff and could be more loosely interpreted. In that connexion, the Tribunal referred to its Judgement No. 237,[30] where it was stated that "the Secretary-General issues administrative orders and information circulars which the Tribunal has held to have the same force and effects as the Staff Rules, unless inconsistent with the Staff Regulations".

The Tribunal consequently concluded that the decisions to withhold the applicant's salary increments in 1971 and 1972 were vitiated by procedural defects and should therefore be rescinded. With regard to the 1973 decision, the Tribunal noted that the applicant had been informed in due time that action was being taken to terminate her appointment for unsatisfactory services and that she had been given the opportunity to challenge that recommendation. It considered that the notice of termination was the equivalent of the procedure contemplated in administrative instruction ST/AI/115 and personnel directive PD/5/69 and accordingly rejected the applicant's pleas relating to 1973. Lastly, with regard to the measures taken by the respondent in 1975 in respect of withholding the periodic salary increment, the Tribunal considered that they were procedurally correct and that the decision was valid.

16. JUDGEMENT NO. 252 (11 OCTOBER 1979);[31] ZANARTU *v.* UNITED NATIONS JOINT STAFF PENSION BOARD

Application contesting a decision depriving a staff member of an early retirment benefit on the basis of a decision by the Pension Fund granting him a disability benefit — Article 28 (a) of the Pension Fund Regulations — Determination of incapacity for the purpose of disability benefits may be made only at the request of the organization involved

In view of the applicant's frail health, UNICEF submitted his case to the United Nations Staff Pension Committee with a view to his being granted a disability benefit, and a favourable decision was taken by the Committee. Some months later, however, the staff member resigned and elected to receive an early retirement benefit commuted in part into a lump sum. UNICEF informed the Secretary of the United Nations Joint Staff Pension Board of those developments, stating that in view of the facts the earlier request that the applicant should be granted a disability benefit was to be considered as void. The Secretary then informed the applicant that, in view of the provisions of article 28 (*a*) of the Pension Fund Regulations and the aforementioned determination by the Pension Committee, he was precluded from giving effect to instructions for the payment of any benefit other than a disability benefit. His request for a review of the Secretary's decision having failed, the applicant brought the case before the Tribunal.

The Tribunal first noted that the applicant had died before the case came to judgement and that his widow and children had decided to pursue the application. It noted that the dispute concerned the sums to be paid to the applicant by the Pension Fund from the date of his resignation to the date of his death, and that since it was not debatable that the widow and sons of the applicant had succeeded to his rights on his death the Tribunal was open to them under article 2 (*a*) of its Statute. It therefore declared itself competent to pass judgement on the application.

After recalling the terms of article 28 (*a*) of the Pension Fund Regulations,[32] the Tribunal proceeded to compare the disability benefit for which the applicant had been eligible with the

[30] See p. 129 above.

[31] Mme Paul Bastid, President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Francisco A. Forteza, Member.

[32] Reads as follows:

"*Entitlement to benefits*

"(*a*) A participant who is not eligible for a retirement benefit under article 29 *or a disability benefit under article 34* may elect on separation to receive an early retirement benefit or a deferred retirement benefit or a withdrawal settlement if he satisfies the conditions of article 30, 31 or 32 respectively." [Emphasis added.]

amount he would have received with the early retirment benefit commuted into a lump sum to the extent of one third of its actuarial equivalent, which he had requested at the time of his resignation. The Tribunal noted that, in view of his frail health, it was clearly in the applicant's interest to receive the early retirment benefit, commuted, rather than the disability benefit.

The Tribunal noted that under rule 4.3 of the Administrative Rules of the Pension Fund, the determination of incapacity for the purpose of disability benefits could be made only at the request of the organization involved, in this case UNICEF. It noted that UNICEF had stated that, in view of the applicant's resignation, the memorandum sent earlier requesting that he be granted a disability benefit was to be considered as void. That memorandum formed the only basis for the Pension Committee's grant of a disability benefit to the applicant, and the voiding of the request contained therein destroyed the basis for the grant of a disability benefit and therefore rendered it void and ineffective *ab initio*. Since on the date of the memorandum in question no periodic payment of the disability benefit had yet been made, the provision in that memorandum which purported to void *ab initio* the original UNICEF request was effective and enforceable.

The Tribunal concluded that the applicant had been entitled to elect to receive an early retirement benefit and to request that it be commuted into a lump sum to the extent of one third of its actuarial equivalent, and it ordered the respondent to give effect to the applicant's election of that formula.

B. Decisions of the Administrative Tribunal of the International Labour Organisation[33] [34]

1. JUDGEMENT NO. 368 (18 JUNE 1979): ELSEN AND ELSEN-DROUOT *v.* EUROPEAN PATENT ORGANISATION

Effect of the merger of two international organizations on their staff regulations and rules. Receivability of a complaint on that matter. Non-existence of an acquired right to the rate, amount or conditions of payment of expatriation allowance. Scope of the principle of equal treatment

As a result of the integration of the International Patent Institute into the European Patent Organisation (EPO), achieved through an agreement between the Chairman of the Administrative Council and the Director-General of the Institute on the one hand, and the President of the European

[33] The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment, and of such provisions of the Staff Regulations as are applicable to the case of officials of the International Labour Office and of officials of the international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1979, the World Health Organization (including the Pan American Health Organization (PAHO)), the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the Interim Commission for the International Trade Organization/General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organization for the Safety of Air Navigation, the Universal Postal Union, the International Patent Institute, the European Southern Observatory, the Intergovernmental Council of Copper Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory and the World Tourism Organization. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organisation and disputes relating to the application of the Regulations of the former Staff Pension Fund of the International Labour Organisation.

The Tribunal is open to any official of the International Labour Office and of the above-mentioned organizations, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death, and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.

[34] Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Lord Devlin, Judge.

Patent Organisation, on the other, the complainants, who were husband and wife and had heretofore been on the staff of the Institute and as such subject to the Staff Rules and Regulations of the Institute, had become, by virtue of article 4 of the integration agreement, EPO staff members and as such subject to the EPO Staff Regulations. As this development resulted in their case in a reduction of their expatriation allowance, they had filed internal appeals against the Council's decision to accept the integration agreement. Their appeals having been dismissed by the Administrative Council by a decision of 9 December 1977, they asked the Tribunal to quash that decision in so far as it made applicable to the complainants the provisions of the EPO Staff Regulations relating to the determination of the expatriation allowance and to quash that decision in so far as it constituted refusal to continue to apply to the complainants the provisions of the Institute Staff Regulations relating to the determination of the expatriation allowance.

EPO pointed out that the complainants did not allege non-observance of the terms of their appointment or of the provisions of the Staff Regulations but asked for the quashing, albeit partial, of the decision of the supreme body of an international organization to authorize the signing of an international agreement on the merger of both organizations. According to EPO, the provisions of the agreement in question were not in law tantamount to any amendment which might be made in the staff regulations of an international organization during its existence; hence, if the Tribunal allowed the claim and quashed the decision to approve the agreement or declare its main provisions null and void, it would be interfering in matters falling within the competence of Member States and of the international organizations set up by them and go outside the limits of its own competence. EPO deemed it unthinkable that the Tribunal should require it to apply staff regulations or grant terms of appointment which its executive bodies had never approved and therefore asked the Tribunal to declare that it was not competent to hear the claims.

EPO further maintained that the decision of 9 December 1977 was merely to dismiss internal appeals against the decision in question and could not be assimilated to a collective or individual decision taken under the Staff Regulations. The complaint was therefore, according to EPO, irreceivable.

The Tribunal found those objections groundless. It pointed out that whether the provisions governing the staff of an organization were embodied in internal rules or in an international agreement, they had been adopted by the representatives of the States members of the organization and their purpose was to govern conditions in the international civil service. Hence, by analogy, just as the Tribunal could decide not to apply a provision of the staff regulations in a particular case, so it could decide not to apply a clause of an international agreement. Moreover, there was no question of asking the Organisation to bring the provisions which used to govern the Institute staff back into force. If a complaint was justified in principle, what the Tribunal would do was to treat those provisions as part of the contract of appointment and apply them as such. What the complainants were really seeking was not the revocation of an international agreement but payment of financial benefits by EPO.

On the merits of the case, the Tribunal noted that the developments described above had resulted in a reduction of the expatriation allowances payable to the complainants and that they were therefore both alleging infringement of their acquired rights.

In this connexion the Tribunal stated the following:

> "A right is acquired when he who has it may require that it be respected notwithstanding any amendment to the rules. It may be either a right which is laid down in a provision of the Staff Regulations or Staff Rules and which is of decisive importance to a candidate for appointment or a right which arises under an express or implied provision in an official's contract of appointment and which the parties intend should be inviolate."

In the view of the Tribunal, the conditions for the acquisition of a right were not met in the present case. It was quite clear that expatriation, education and leave expense allowances were matters of importance to someone who joined the staff of an international organization. The question therefore arose whether the outright abolition of such allowances would in principle violate an acquired right. There was, however, no acquired right to the amount and the conditions of payment

of such allowances. Indeed, the staff member should expect amendments to be prompted by changes in circumstances if, for example, the cost of living rose or fell, or the organization reformed its structure, or even found itself in financial difficulty. Hence the reduction in the expatriation allowance paid to the complainants did not infringe any right which was of decisive importance to them in accepting appointment and which might be regarded as acquired. Moreover, there was no clause in their contract which even tacitly guaranteed them any such right. Finally, the Tribunal noted that according to article 11.2 of the integration agreement, the application of the new provisions "may not under any circumstances result in the payment of a total net salary lower than that which, containing the same elements, was received by the official in respect of the last full month prior to the entry into force of this agreement". In other words, in any event the complainants suffered no actual cut in remuneration. The Tribunal therefore rejected the plea that acquired rights had been infringed.

The complainants finally claimed that the acceptance of the integration agreement introduced an element of discrimination among staff members inasmuch as the amount of the repatriation allowance varied depending on whether the spouse of a staff member was or not on the staff of EPO. The Tribunal recalled that the principle of equality meant that where the facts were the same the treatment was the same: spouses who were both on the EPO staff were not in the same position as spouses of whom only one was on the EPO staff, and a difference in treatment was therefore warranted.

In the light of the above, the Tribunal dismissed the complaint.

2. JUDGEMENT NO. 369 (18 JUNE 1979): NUSS *v.* EUROPEAN PATENT ORGANISATION

Effect of the merger of two international organizations on their staff regulations and rules. Receivability of a complaint on that matter. Non-existence of an acquired right to privileges, immunities and facilities granted to the organization and its officials in the interest of the organization

The complainant, formerly an official of the International Patent Institute in The Hague, became an official of the European Patent Office on 1 January 1978 in accordance with the integration agreement concluded on 19 October 1977 between the Institute and EPO. On 2 December 1977 he lodged an internal appeal against the decision of the Administrative Council of the Institute to approve the integration agreement, on the grounds that some of its provisions costituted a grave breach of the essential terms of his appointment. The Council dismissed his appeal by a decision of 9 December. That decision was notified to the complainant on 14 December and it is the one he impugned before the Tribunal. The complainant maintained that by concluding the integration agreement the Institute consented to the replacement of its own Staff Regulations by basically different ones. In particular, it had done away with article 11 of the Institute Staff Regulations, which conferred on Institute staff the status of international officials who enjoyed the benefits of immunities and privileges granted by the host State to the organization. It was clear, he stated, that the defendant organization was at fault because it failed to do its utmost, particularly in negotiations with the Dutch authorities, to safeguard the interests of its expatriate staff. The Institute, he said, made a practice of referring to the benefits in its publicity material and offers of employment. It therefore knew full well that by consenting to the withdrawal of those benefits it was authorizing a change in one of the basic terms of appointment. He asked the Tribunal to quash the decision of 9 December 1977 in so far as it failed to preserve article 11 of the Institute Staff Regulations; subsidiarily, to quash the decision in so far as it constituted a refusal to award the complainant at least financial compensation for the wrong he was suffering owing to the loss of the special benefits enjoyed by international officials; to appoint an expert to assess the actual damage suffered by the complainant by reason of the loss of the benefits of article 11 of the Institute Staff Regulations; to order the Institute or its successor to pay the complainant a monthly allowance to be determined by the expert; to order the Institute or its successor to pay damages amounting to not less than 2,000 guilders for the moral prejudice suffered by the complainant; and to award costs against the defendant, the amount to be determined by the Tribunal.

The Tribunal observed that, as a consequence of the merger agreement signed on 19 October 1977, the European Patent Office, not the International Patent Institute, was the defendant organization. As to procedural aspects, the Tribunal declared the complaint receivable, rejecting for reasons similar to those stated in Judgement No. 368[35] several arguments of the defendant organization to that effect. Furthermore, contrary to what the organization maintained, the Tribunal observed that the question of the privileges and immunities enjoyed by the Institute and EPO staff under the headquarters agreements was not one of competence but a matter of substance, to wit, whether or not the complainant was entitled to continue to enjoy certain privileges.

With reference to the privileges and immunities granted to the staff of the International Patent Institute and the European Patent Office and the alleged violation in their respect by the complainant, the Tribunal observed that the complaint of the staff member constituted an alleged violation of acquired rights. A right was acquired, the Tribunal observed, when he who had it may require that it be respected notwithstanding any amendment to the rules. The Tribunal further elaborated on that concept in terms similar to those contained in Judgement No. 368.[35] The Tribunal observed that the conditions for the acquisition of a right were not met in this case. The privileges which the complainant said that he had lost derived, first, from the headquarters agreement between the Netherlands Government and the Institute and, secondly, from the Institute Staff Regulations. Article XI of the agreement provided, however, that the privileges, immunities and facilities were granted to the Institute and its officials solely in the interests of the Institute and not for their personal advantage. Similarly, the first paragraph of article 15 of the Institute Staff Regulations confirmed that the privileges and immunities and facilities were granted to the Institute and its officials solely in the interests of the Institute and not for their personal advantage. Similarly, the first paragraph of article 15 of the Institute Staff Regulations confirmed that the privileges and immunities of the staff were granted in the interests of the Institute. Hence, according to the terms of the agreement and the Staff Regulations, the privileges granted thereunder and now claimed by the complainant were not a personal right, and so could not have been of decisive importance to him when he accepted appointment. Furthermore, the Tribunal found, there was no clause in his contract expressly guaranteeing the complainant the benefits he was claiming. And although the Institute did mention the privileges in more or less explicit terms in its publicity material and in notices to future staff members, it explained that the benefits were granted by the Netherlands Government and made no firm promise on which the complainant might rely. New staff members should therefore have realized that the benefits depended on the continuation of an agreement with a State which could at any time ask to have it amended, or even just amend it. Besides, the Tribunal found that the complainant continued to enjoy the main tax advantage, namely, exemption from income tax. The Tribunal further observed that the allegation of negligence against the Institute had not been proved.

The Tribunal dismissed the complaint.

3. JUDGEMENT NO. 370 (18 JUNE 1979): MERTENS *v.* EUROPEAN PATENT ORGANISATION

Complaint impugning a decision not including a staff member in the promotion list. Exhaustion of internal means of redress in cases of non-appealability of decisions. Discretionary character of decision not to promote. Limited circumstances under which a discretionary decision may be interfered with: lack of authority, formal or procedural flaw, mistake of fact or of law, omission of essential facts, abuse of authority, mistaken conclusions drawn from facts. Non-existence of those circumstances in the decision involved in the present case. Dismissal of the complaint

The complainant, an administrative assistant at grade B-3 in the International Patent Institute, was one of the those eligible for promotion to B-2 in accordance with the career pattern for an administrative assistant. Careers committees were appointed to draw up the promotion rosters. The decision promoting officials in 1977 was posted in the Institute on 9 December 1977.

[35] See subsection 1 above.

The complainant was not on the list of promotions to B-2. By a letter of 15 December he submitted an internal appeal to the Director-General. On 1 January 1978 the European Patent Organisation succeeded the International Patent Institute, and on that date the complainant became an official of the European Patent Office in accordance with the integration agreement concluded between the two organizations. By a letter dated 1 February 1978 in reply to his letter of 15 December 1977, the complainant was informed that in accordance with the Staff Regulations of the former Institute the decision of 9 December 1977 was, as far as EPO was concerned, final. That was the decision impugned by the complainant before the Tribunal.

He contended that his merits were comparable with those of the first two eligible candidates, who did get a promotion. The Careers Committee, he observed, did not seem to have performed its task with the conscientiousness expected of it nor did the Director-General's decision seem to have been founded on any more consistent grounds, he argued. The decision not to promote him constituted wrongful and unfair treatment, especially in view of its effects on his subsequent career. He was appointed administrative assistant in 1973 and as such had access to the higher grade, B-2, with a maximum yearly salary of 68,908 guilders. The decision had the effect not only of postponing for some time the normal financial benefit of promotion but also of preventing him from reaching that maximum salary level. Moreover, as a result of the absorption of the Institute staff by EPO on 1 January 1978 he was automatically graded B-5 in the grading system of the new organization, whereas other staff members promoted to Institute grade B-2 in 1977 were given grade B-6 in the European Patent Office. Grades B-5 and B-6 in that Office were not combined, and the almost automatic career system which applied in the Institute did not exist in the Office. He had now no hope of obtaining the remuneration he would have received at Institute grade B-2. If he happened to be promoted to Office grade B-6 his remuneration would still be that of Institute grade B-3, which was higher than that of Office grade B-6. On the other hand, officials who were promoted to Institute grade B-2, and who now had Office grade B-6, would get the remuneration which applied to Institute grade B-2. The complainant therefore considered that he had suffered a covert penalty, although he had always been regarded as a good official.

He asked the Tribunal to decide that the decision of 9 December 1977 was wrongful; that he should have been promoted to Institute grade B-2; should the Tribunal unaccountably refuse to order his promotion to Institute grade B-2, that his remuneration from EPO, although, since 1 January 1978, he had held only EPO grade B-5, was that which he would have received had he been promoted to Institute grade B-2; that he should be paid damages corresponding to 4 per cent interest on the difference between B-3 and B-2 remuneration from the date of his promotion, in the usual way (from the anniversary of the date of taking up appointment); that he should be paid 1,000 guilders to cover costs; and that the Organisation should produce comparative data (on seniority, performance marks, and the like) for all B-3 staff members whether or not they reached grades B-2 and A-7 in the Institute so that the complainant could, if need be, submit further plans and the Tribunal could pass judgement in full knowledge of the facts.

As to procedural aspects, the Tribunal observed that the Director-General had been correct in dismissing the internal appeal submitted by the complainant on the ground that, in accordance with Institute staff regulation 82, the decision notified on 9 December 1977 was not subject to internal appeal and an appeal against it would lie only to the Tribunal. The Tribunal rejected the complainant's contention that the question of the receivability of the internal appeal ought to have been decided by the Appeals Committee itself, not by any intermediary such as the Director-General. Although it was true that as a rule a decision not to hear a case should be taken by the appeals body and not by the body which communicated the appeal to it, in the present instance, however, it was so obvious that no internal appeal would lie that the intermediary could hardly be blamed for not letting the appeals body itself declare the appeal irreceivable. In any case it would be unduly formalistic to quash the impugned decision because of a flaw which had no effect whatever on the proceedings or on the outcome of the case. The Tribunal therefore considered that the internal means of redress had been exhausted and, since the complaint had been filed within 90 days from the notification of the impugned decision, it was receivable.

Regarding the last part of the complainant's claim for relief, namely, the request of communication of information, the Tribunal observed that all that the Tribunal had to determine was why the two staff members promoted to B-2 for 1977 were thought to be more deserving than the complainant. The reasons why other staff members were kept at B-3 or promoted to A-7 — a grade which the complainant was not interested in — were immaterial and needed not therefore be considered here. Therefore the comparative table submitted by the Organisation on the two promoted officials and the complainant himself was sufficient.

As to the decision not to promote the complainant, the Tribunal found it was a discretionary one. Hence the Tribunal could quash it only if it was taken without authority, or was tainted by a formal or procedural flaw, or was based on a mistake of fact or of law, or if essential facts were left out of account, or if the decision was tainted with abuse of authority, or if clearly mistaken conclusions were drawn from the facts. The complainant had failed to establish any of the flaws which would entitle the Tribunal to interfere.

In particular, the Tribunal added, there was nothing to suggest that in taking the impugned decision essential facts had been left out of account. The Careers Committee had compared the merits of the officials concerned, with due regard to their seniority and age. The impugned decision was no doubt based on the same criteria which, as a rule, were the ones applied.

Lastly, the Tribunal observed that it did not appear from the dossier that clearly mistaken conclusions had been drawn from the facts. One of the two officials promoted to B-2 in 1977 had joined the Institute staff 20 years earlier than the complainant, had reached B-3 a year earlier, was at a much higher step and had been given the same performance marks as he from 1974 to 1976. He therefore had qualifications which the complainant did not. The other staff member promoted to B-2 in 1977 had joined the Institute staff and reached B-3 earlier than the complainant, was at a higher step and had been given a higher mark in 1976. Hence, the Director-General did not abuse his discretionary authority and the effects of the decision not to promote the complainant derived from the relevant rules.

The Tribunal therefore dismissed the complaint.

4. JUDGEMENT NO. 371 (18 JUNE 1979): MERTENS *v.* EUROPEAN PATENT ORGANISATION (NO. 2)

Effect of the merger of two international organizations on their staff regulations and rules. Receivability of a complaint on that matter. Non-existence of an acquired right to a specific grade if the duties and remuneration of the post remain the same. Non-existence of an acquired right to the method of salary adjustment, to conditions governing promotion, to conditions of payment of expatriation allowance or to privileges and immunities granted to the organization and its officials in the interest of the organization. Compensation factors in the application of the principle of equal treatment

The complainant, a former staff member of the International Patent Institute and now an official of the European Patent Office, contended that the decision of the Administrative Council of the Institute of 23 September 1977 whereby it approved the integration agreement with the European Patent Office[36] had been taken in breach of article 90 of the Staff Regulations, which related to joint consultations; that he fared less well in the new organization in that he held a lower grade; that the salary scale was less favourable; that there was now a discriminatory system of remuneration in that there were two different categories; that pension benefits were calculated at the rate of 2 per cent of the salary for each year of service for EPO officials but at the rate of 1.75 per cent for former Institute officials; that career opportunities were not as good; that an additional increment was no longer granted in the event of promotion; and that because of the merger of the two organizations the complainant had forfeited almost all his diplomatic privileges, to which the Institute referred in publicity material at the time of his recruitment and which had been of decisive importance to him in accepting appointment. He asked the Tribunal to declare that the decisions of 23 September 1977

[36] See subsections 1 and 2 above, Judgements Nos. 368 and 369.

and 9 December 1977 (which rejected his internal appeal) were improper and, failing the quashing of those decisions, that they did not affect him; and to award him fair compensation for present and future material prejudice and for the moral prejudice he had suffered, and costs. As to procedural aspects, the Tribunal declared the complaint receivable, rejecting, for reasons similar to those stated in Judgement No. 368,[37] several arguments of the defendant organization to that effect.

The Tribunal also found that, contrary to what the complainant contended, the Administrative Advisory Committee of the Institute had in fact been consulted and although it expressed no opinion, which was optional in accordance with the Staff Regulations, it had discussed the matter of the merger at four meetings. It therefore rejected that plea.

As to the merits, the Tribunal observed that the substance of the official's complaint constituted an alleged breach of his acquired rights. It defined and elaborated on that concept in terms similar to those contained in Judgements 368, 369 and 370.[38] The Tribunal further pointed out that the condition for the acquisition of a right had not been met in the present case. With reference to the complainant's contention that he had been given in EPO a grade which was normally less well paid and which, in his view, did not match his responsibilities, the Tribunal pointed out that neither the Institute Staff Regulations nor the complainant's terms of appointment gave him an acquired right to any particular grade. What mattered to a staff member was not so much his actual grade as the consequences of obtaining it. The Tribunal observed that there was no need to consider whether a staff member had an acquired right to continue to receive the agreed remuneration since in any event the complainant had not been deprived of that right, which was guaranteed by means of payment of a compensatory allowance. Moreover, even if the complainant now held a grade inferior to his qualifications, he was performing in the EPO the same duties that he performed in the Institute. He had therefore not been deprived of any acquired right by the transfer from his former employment.

As to the method of salary adjustment, the complainant had no acquired right to the application of the methods practised in the Institute. There was therefore no need to consider whether the EPO Staff Regulations prescribed the same incremental curves as did the Institute rules.

With reference to the alleged discriminatory treatment based on the different rate for calculation of retirement pension, the Tribunal observed that that argument was based on only one factor of comparison between the position of former Institute officials and that of other EPO officials, namely, the relationship between contributions and pension benefits. It left other factors out of account, such as the payment of a compensatory allowance to the former Institute officials to make good the reduction in salary which they would have suffered had the scale applying to other EPO officials been applied to them. Hence, while former Institute officials fared less well in one respect than other EPO officials, they fared better in another, which appeared just as important. Hence, in so far as existed, the discriminatory treatment which the complainant alleged should be regarded as compensated.

Regarding the conditions governing promotion, the Tribunal observed that it was not a fact of decisive importance that as a result of the integration agreement the complainant would not derive from any promotion the benefits he would have enjoyed as an Institute official. The provisions which laid down the conditions governing promotion did not confer any acquired rights on a staff member because, when he took up his appointment, he could not foresee how he would fare in his career. On the contrary, those provisions were subject to amendment and the staff member could expect such amendment.

With reference to the arguments concerning the reduction in the expatriation allowance and the forfeiture of diplomatic privileges and immunities, the Tribunal rejected them for reasons similar to those given, respectively, in its Judgement No. 368 and in its Judgements Nos. 369 and 372.[39] The Tribunal therefore dismissed the complaint.

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[37] See subsection 1 above.
[38] See subsections 1, 2 and 3 above.
[39] See subsections 1 and 2 above and 5 below.

5. JUDGEMENT NO. 372 (18 JUNE 1979): GUYON *v.* EUROPEAN PATENT ORGANISATION

This case is broadly similar to the case dealt with in Judgement No. 369.

6. JUDGEMENT NO. 373 (18 JUNE 1979): ABBOT *v.* WORLD HEALTH ORGANIZATION

Complaint seeking compensation for loss of professional standing following a decision to abolish a post and to transfer a staff member. Discretionary character of the impugned decision. Circumstances under which such decisions may be interfered with by the Tribunal. Impugned decision found by the Tribunal as implying either error of fact or law, lack of consideration of essential facts or clearly mistaken conclusion drawn from facts. Obligation for the organization to compensate the staff member for loss of professional standing and for personal distress caused by improper transfer

The complainant, who had been in the service of the World Health Organization as a nurse from 1959, held in 1972 the post of regional nursing adviser in Manila at grade P-4. In 1974 the Organization decided to divide her responsibilities, leaving her with Nursing Education and creating a new post of regional adviser on nursing administration and services. A Miss L. was appointed to the latter post. In 1976 the Regional Director, for a reason that is not challenged, namely, because of the decreasing work load, decided that the two posts should be reunited. Further, he decided, which decision is challenged, to achieve this by abolishing on 1 October 1976 the complainant's post. The complainant's contract of service had not been terminated and she had since been employed on assignments at the P-4 grade in Copenhagen.

Miss L. was due to retire from her post in February 1977 when she reached the age limit. A new description of the post was prepared, it was raised to the P-5 level and advertised early in 1977. The complainant applied for it unsuccessfully. A Miss F., a staff member of WHO serving as a nurse in a team financed by the United Nations Fund for Population Activities, was appointed.

Appeals to the Regional Board of Inquiry and to the Headquarters Board of Inquiry and Appeal, although partially decided in favour of the complainant, did not entirely satisfy the latter's claims.

The complainant contested both the decision to abolish her post rather than Miss L.'s post and the decision to appoint Miss F. rather than herself to the P-5 post after Miss L.'s retirement. The complainant believed that she had suffered from the malice of the Regional Director and that there was no sound reason for refusing to appoint her to the post left vacant on the retirement of Miss L. Her professional reputation had been damaged by what she regarded as unlawful action, and her present duties did not carry the same responsibility and prestige as those she performed before. She claimed payment of her full salary up to 31 August 1980, her full pension at the age of 60, and full termination benefits (repatriation expenses, etc.); repayment of the cost of shipping home her personal effects from Manila; compensation for the damage to her professional reputation, which she considered should be not less than $30,000; and costs. Since, in principle, the infringed decisions were within the sphere of discretionary authority, the Tribunal thought it could interface with them only if they were taken without authority, or violated a rule of form or procedure, or were based on an error of fact or of law, or if essential facts had not been taken into consideration, or if the decisions were tainted with abuse of authority, or if a clearly mistaken conclusion had been drawn from the facts.

The Tribunal, recalling some findings of fact of the Headquarters Board of Inquiry and Appeal, found certain features of the affair surprising. The complainant had in 1976 about four years to run before she reached the retirement age, while Miss L. had only five months: the complainant's annual appraisals had always been good: why had her post been selected for abolition and not Miss L.'s? Furthermore, the description of the new P-5 post was almost identical with that of the complainant's post before it was divided. In the choice between the candidates what weight, if any, had been given to the complainant's experience of the same work? Why had the grade of the new post been raised to P-5? Had it remained at P-4, it would have been difficult not to have offered it to the complainant as "a reasonable offer of re-assignment" within the spirit of MS 9.340; this regulation, however,

provided that there was no obligation to offer to a displaced official a post of a higher grade. Miss F. did not enjoy the priority which attached to a person whose post has been abolished.

Although the Tribunal found no positive evidence of personal prejudice towards the complainant, the matters set out in the preceding paragraph called for an explanation. Since there was none to be found in the dossier the Tribunal felt bound to infer that in the taking of the decision there had been some error of fact or of law or that essential facts had not been taken into consideration or that a clearly mistaken conclusion had been drawn from the facts. Accordingly, the decision had to be set aside.

The Tribunal laid special weight in the head of claim seeking financial compensation for loss of professional standing and personal distress. What the complainant might have had to accept as the inevitable consequences of a valid transfer, she was not obliged to accept without compensation when the transfer was made improperly. Positions which were graded at the same level might nevertheless differ considerably in status and prestige. The Tribunal found that the complainant had lost the professional standing that the post of regional adviser gave. Moreover, the transfer was handled in such a way as to give the impression that she was being edged out of her position for reasons unstated; this must have caused her personal distress.

Accordingly, the Tribunal allowed the complaint in so far as it related to compensation for loss of professional standing and personal distress, ordering that the decision of the Organization, in so far as it refused to pay such compensation, be quashed; that the Organization pay to the complainant $8,000 as such compensation and reimburse her costs in the proceedings to the extent of $2,000; and that, save to the extent that they were accepted in the impugned decision, the other claims be dismissed.

7. JUDGEMENT NO. 374 (18 JUNE 1979): ALMINI *v.* INTERNATIONAL CENTRE FOR ADVANCED TECHNICAL AND VOCATIONAL TRAINING (INTERNATIONAL LABOUR ORGANISATION)

Complaint seeking interpretation of the words "one year's salary compensation" to be paid in lieu of reinstatement ordered by the Tribunal in another judgement. Interpretation of those words by the Tribunal as meaning net salary at the end of the appointment plus incidental allowances including post adjustment

By Judgement No. 306 [40] the Tribunal had ordered the defendant organization to reinstate the complainant in his former post and, failing that, to pay him a sum equivalent to one year's salary. In executing that judgement the defendant organization decided not to reinstate the complainant but to pay him the prescribed compensation.

The complainant asked the Tribunal to say whether the words "one year's salary" should be construed to exclude post adjustment and family allowances or to mean "one year's full salary", including, over and above net salary, post adjustment and family allowances, and whether the step taken to determine the "salary" should be the last one held by the complainant or the next one above.

The Tribunal observed that it was clear from the wording of the judgement that the "one year's salary" to be paid in lieu of reinstatement was equivalent in that particular instance to the salary which the complainant was receiving at the date when his appointment ended, i.e. the net salary which he was paid after deduction of tax at the source but including incidental allowances, and in particular post adjustment. There was no reason, however, to take account of any increment which he might have received had he remained on the staff.

8. JUDGEMENT NO. 375 (18 JUNE 1979): DURAN *v.* PAN AMERICAN HEALTH ORGANIZATION

Complaint inpugning a decision terminating sick leave and ordering reassignment of a staff member. Receivability of the complaint. Test of receivability of a complaint applies to the decisions

[40] See *Juridical Yearbook*, 1977, chap. V, sect. B 21.

as a whole, not to separate issues raised by them. Medical and financial aspects involved in granting of sick leave. Power of the Director to assess evidence of incapacitation if contradictory or indeterminate. Discretionary power of the Director to order reassignment of a staff member. Circumstances which a transfer must not involve. Dismissal of the complaint by the Tribunal

The complainant, a P-4 professional staff member with a permanent appointment in Washington, was informed by the Organization in March 1975 that she was to be transferred to a P-4 post in Barbados. She protested against the transfer, and it was eventually cancelled because of the objections of the Director of the Joint Medical Service who, on medical grounds, advised giving the complainant sedentary work in Washington. On 14 July 1976 the PAHO medical referee said that the complainant was fit for service in Brasilia provided that she would not be required to travel, and on 2 August 1976 the Chief of Administration officially informed her of her transfer to Brasilia.

The complainant then went on annual leave and later on sick leave. On 4 November 1976 the Chief of Personnel was informed by the medical referee that the complainant should be put on sick leave or temporary disability for a period of 6 to 12 months and that she would require medical clearance before returning to work. The complainant then left for Florida, where she took a university course. Between October 1976 and May 1977 there was a series of medical reports on her — in particular by consultant psychiatrists — and the Director of the Joint Medical Service then decided that she was fit to resume work, in the post in Brasilia if it was still available. On 8 June 1977 the Chief of Administration asked the complainant to take up her post in Brasilia and first to report to Washington for briefing. She was to arrive in Brasilia by 1 August at the latest. On 27 June the complainant's attorney informed the Chief of Administration that she refused to go to Washington on the grounds that she had not been given adequate medical clearance for her prescribed duties. On 2 August the Chief of Administration told her that if she did not report to Brasilia by 22 August her appointment would be terminated on that date in accordance with staff rule 980 for abandonment of post. Having failed to comply on 23 August she was informed that her appointment had been terminated with effect from the day before.

On 21 November 1977, the Director of the Bureau, against the recommendation of the Board of Inquiry and Appeal to which the complainant had appealed, upheld the decision to transfer her to Brasilia. This decision was impugned by the complainant before the Tribunal.

The complainant alleged that the decision to send her to Brasilia constituted a breach of several provisions of the Staff Regulations and Staff Rules and that the appointment in Brasilia was a less responsible one and would therefore have proved damaging to her career. She took the view that PAHO did not have adequate medical grounds for terminating her sick leave and transferring her to Brazil. She therefore asked the Tribunal to reinstate her in sick leave with pay from 20 June 1977 until termination of the sick leave was justified by facts set forth by medical experts who would have evaluated her; to cancel her reassignment to Brasilia or, failing that, to postpone such reassignment until she was medically cleared for the post; and to order the repayment of reasonable fees for her attorney and expenses incurred in the internal proceedings and in the Tribunal proceedings.

The Organization contested the receivability of the complaint in so far as it challenged the transfer to Brasilia, and then, only as it related to certain issues raised by this challenge which the Organization regarded as being out of time. As to the merits, the Organization asked that the complaint be dismissed.

As to the receivability of the complaint, the Tribunal observed that the test of receivability was applied to decisions, not to issues. If an appeal against a decision was receivable, the appellant must be allowed to raise any issue that was relevant to the decision unless that issue had actually been decided and so became *res judicata*.

As to the merits, the Tribunal defined its task as one of deciding whether, on the whole of the material known to the Director on 21 November, it had been unreasonable for him first to terminate the complainant's sick leave and secondly to assign her to Brasilia. An entitlement to sick leave with its accompaniment of sick pay, the Tribunal observed was not a matter to be settled simply by a medical evaluation. It was not uncommon for a specialist to advise that the patient should give up his job until his symptoms disappeared, then allow a year free from syptoms to elapse and then begin

to consider going to work again. The Director had to take a practical decision. The advice tendered may well be the best way of effecting a complete cure in the long run. The question for the Director, however, was not whether it should be accepted or rejected — that was for the patient — but whether the cure proposed should be financed by the Organization or an insurance company. The Director was bound by the regulations. He could not decide that the insurance company should pay unless he had concluded under staff rule 670.1 that the staff member was incapacitated from the performance of his duties. The only course open to the Director had been to examine and assess the evidence of incapacitation. The conclusion of the Board had been in effect a finding that, on the evidence as it stood and without a further evaluation, the complainant was incapacitated. The Tribunal further proceeded to establish whether the Director could reasonably have differed from this conclusion. The Tribunal found that the evidence of incapacitation contained in the complainant's dossier could be subjected to two main criticisms. First, the psychiatrist consulted on whose opinion largely rested the evidence of incapacity, said before the Board virtually the opposite of what he had said five months before. Secondly, the evidence of incapacity was of an indeterminate character. It was virtually conceded that the complainant could work anywhere except at her old job or "overseas". The former disability was readily understandable, but no attempt had been made by any of the witnesses or in the arguments advanced for the complainant to explain why she could not work overseas. It was understandable that a line should be drawn between those countries which have and those which do not have temperate climates and good medical facilities, but not readily understandable why that line should coincide with the line drawn between the United States and other countries. It was nowhere explained why the complainant was capable of doing the work which she wanted to do in Miami but incapable of doing the work that she did not want to do in Brasilia. A decision to send her to Brasilia did not mean a decision to keep her there if her health suffered; it need mean no more than a decision to give it a trial. There was nowhere in the medical evidence a firm, clear and reasoned statement that merely to begin work in Brasilia would be likely to cause disablement by anxiety and depression. In its absence, the Tribunal concluded that it had not been unreasonable for the Director to conclude that incapacitation had not been established.

As to the assignment itself, the Tribunal observed that the Director's choice had been strictly limited. The complainant could not, in her own interest, apart from those of the Organization, be returned to headquarters. It was not suggested that there was any other place of duty in the United States to which she could be assigned. The choice lay between an assignment to Brasilia, about the results of which the evidence was at best obscure, and a termination of her appointment, the result of which, according to her psychiatrist might be a violent response, either in a reactivation of the neurosis or some other assertion of her anger and feeling of injustice. A decision to give the former a trial before resorting to the latter could not, considering only the complainant's interest, be faulted. The Tribunal also found that in accordance with staff rule 4.65 a staff member could be reassigned whenever it was in the interest of the Bureau to do so. The Tribunal conceded that it was well established that in the ordinary case the transfer must not involve a change of grade or a reduction in salary or a lowering of dignity. The Tribunal found, however, that in this case the responsibilities of the two posts were broadly the same since they carried the same grade of P-4. Furthermore, even if the new post could be considered a less important and desirable position, that was a sacrifice which, in the interests of the Organization (which in this case, since no one disputed the need for a transfer, coincided with her own), the complainant must be prepared to make.

Finally the Tribunal rejected other arguments of the complainant based on procedural irregularities. It declared the complaint receivable but dismissed it.

9. JUDGEMENT NO. 376 (18 JUNE 1979): HUNEKE-LOGAN *v.* WORLD HEALTH ORGANIZATION

Complaint impugning a decision to terminate an appointment on grounds of physical limitations. Decision of the Tribunal concluding that the impugned decision was a lawful application of the relevant staff rule

On 1 September 1965 WHO appointed the complainant as a statistician under a two-year contract to a post which was later graded P-2. On 1 September 1967 she had her appointment

extended by five years. She took 35 days of sick leave in 1968, 286 days in 1969, 18 ½ days in 1970 and 21 ½ days in 1971. In March 1972 she asked for a five-year appointment. On the advice of the Medical Service she was given only a two-year appointment, expiring on 31 August 1974. In 1972 she took 7 days of sick leave, in 1973 18 days and in 1974 20 days.

WHO contended that the complainant's working relations with her colleagues were unsatisfactory. The complainant blamed her immediate supervisor. She also complained of pains in her arms which she said were due to overwork and prevented her from doing her work properly. In November 1975 the chief of her branch and the Director of the Medical Service proposed transferring her. WHO stated that there was no vacancy. The complainant took 17 days of sick leave between 1 January and 30 August 1975 and was absent 17 times for reasons of health between 30 August and 26 November. She applied for leave without pay for six months from 20 January 1976 and for another six months from 21 June 1976.

On 27 July 1976 the complainant was informed by the Organization that her appointment was terminated in accordance with staff rule 930.5. The complainant made three claims in turn. First, she asked that her ailments — epicondylitis and epitrochleitis — should be regarded as service-incurred. The Director-General dismissed that claim on the recommendation of the Compensation Claims Committee. Secondly, she appealed against the administrative decision, taken on medical grounds in accordance with staff rule 930.5, to terminate her appointment. Thirdly, she claimed compensation for total disability. That claim was dismissed on 6 January 1978 by the insurance administrator. WHO also decided to set up a medical board of review in accordance with the text of staff rule 1020.1, then in force. After review of the complainant's medical file, medical examinations and two interviews between the chairman of the board and the complainant, the medical report confirmed the medical limitations which were the grounds for terminating her appointment. On 18 January 1978 the Director-General upheld his decision to terminate that appointment with effect from 6 September 1976.

The complainant filed her complaint asking the Tribunal principally: to declare that there were no medical grounds which warranted termination by WHO of appointment on the basis of staff rule 1020.2; to declare accordingly that the termination of her appointment was unwarranted and therefore null and void; to order WHO to reinstate her; to order WHO to pay her as compensation for loss of salary the amount which she would have been paid in salary from 6 September 1976, the date of termination, and subsidiarily, should the Tribunal nevertheless uphold the Director-General's decision of 18 January 1978, to quash the insurance administrator's decision of 6 January 1978; to award her compensation for her disability; and accordingly to order the medical board to establish the decree of her disability.

The Tribunal recalled WHO staff rule 930.5 which states:

> "When, on the advice of the Staff Physician, a staff member is unable to continue his present functions because of physical limitations, although he would be suitable for another assignment in the Organization, but for whom no such assignment can be found, the staff member or a physician designated by him will be informed of the medical conclusions as outlined in Staff Rule 1020.1 and his appointment shall be terminated. He shall be entitled to a notice period equivalent to that specified in Staff Rule 950.3 and to an indemnity equivalent to that specified in Staff Rule 950.4."

It appeared clearly to the Tribunal from the report of the WHO medical board that, first, the pains suffered by the complainant were not attributable to her work in WHO and that, secondly, they did not prevent her from doing that work, provided certain arrangements were made. On the first point, the Tribunal accepted the unanimous opinion of the medical board, which consisted of three especially well-qualified physicians, including one designated by the complainant herself.

On the second point, the Tribunal observed that from the documents in the dossier it appeared that WHO was unable to find any post which the physicians felt would have suited the complainant. Her performance was not beyond criticism and was partly to blame for the reluctance of chiefs of branch to take her on their staff. But the main reason why WHO could not find a post for her, the Tribunal went on to say, was that her duties were highly technical and so there were few posts suitable for her.

The Tribunal found the Organization's application of staff rule 930.5 correct and the complainant's claim for compensation unfounded. It therefore dismissed the complaint.

10. JUDGEMENT NO. 377 (18 JUNE 1979): RUDIN *v.* INTERNATIONAL LABOUR ORGANISATION

Complaint impugning a decision on the grading of a post. Procedure to be followed. Discretionary authority of the Director-General on matters of post-grading

The complainant impugned a decision on the grading of her post. She had previously appealed against that grading to the Professional Grading Appeals Committee and, after the original decision had been confirmed by the Director-General on the Appeals Committee's recommendation, she had submitted a "complaint" under article 13.2 of the Staff Regulations. The Director-General had referred the complaint to the Professional Grading Appeals Committee which had confirmed the grading and whose recommendation the Director-General had endorsed in the decision now before the Tribunal.

The complainant alleged procedural irregularities and asked the Tribunal, principally, to quash the decision under consideration and declare that her post should be graded at a higher level or alternatively, to request the Director-General to review the impugned decision on the basis of a report by a joint committee with full powers of inquiry.

The Tribunal observed that from the wording of article 13.2 of the Staff Regulations it appeared that although the Director-General could, if he wished, consult the joint committee on a "complaint" submitted to him by a staff member, he was under no duty to do so. The complainant appealed to the Director-General against a decision on her grading which he had taken on the recommendation of the *ad hoc* appeals committee, and it was open to him either to decide on that appeal without prior advice or else to seek further advice. In the latter case, there was no objection to his consulting again before taking the impugned decision the committee which he had already consulted, particularly since the matter was of an essentially technical nature.

As regards the complainant's allegations of irregularities in the procedure followed by the Appeals Committee, the Tribunal found them unsubstantiated.

As to the merits, the Tribunal observed that in grading the complainant's post the executive head exercised his discretionary authority. Hence the Tribunal would consider neither whether the grading criteria applied were sound, nor whether they were correctly chosen and applied nor, in particular, whether the degree of responsibility attaching to the complainant's post was properly taken into account.

The case would be different only if the Tribunal had discovered some clear mistake of assessment in the decision which the Director-General had come to. No such conclusion could be drawn from the documents in the dossier. The Tribunal therefore dismissed the complaint.

11. JUDGEMENT NO. 378 (18 JUNE 1979): SAUER *v.* EUROPEAN ORGANIZATION FOR THE SAFETY OF AIR NAVIGATION

Complaint by a technical staff member of the Karlsruhe Control Centre impugning a decision declaring him as having "non-active status". Circumstances under which such a declaration is lawful. Dismissal of the complaint by the Tribunal

The complainant, a citizen of the Federal Republic of Germany, was a second-category controller at the Karlsruhe Centre. In accordance with annex V to the Staff Regulations governing officials of the Eurocontrol Agency, the administrative regulations governing the permanent staff of Eurocontrol apply to members of the technical staff of the control centres at Maastricht and Karlsruhe.

The Federal Republic of Germany decided that the Federal Office of Air Navigation Safety (Bundesanstalt für Flugsicherung) should be in charge of air navigation, and the procedure for declaring staff to have "non-active status" therefore had to be followed. By a circular of 14 June 1977 the Director-General informed the staff that the measures approved by the Permanent

Commission on 9 June 1977 would be put into effect. On the Joint Committee's recommendation decisions were taken on 13 July and 10 August on the types of posts abolished and on the list of eight staff members declared to have "non-active status". On becoming "non-active" four of them were redeployed to the French and West German administration and another was re-engaged by Eurocontrol. On 15 September the complainant appealed against the Director-General's decision of 10 August to include him in the list of "non-active" staff. His appeal was dismissed on 13 January 1978.

The complainant took the view that, in so far as the decision to declare him to have "non-active status" was based on article 41 of the Staff Regulations, it should be quashed for want of a proper foundation in law.

Article 41 of the Staff Regulations reads as follows:

"1. An official with non-active status is one who has become supernumerary by reason of reduction in the number of posts in the Agency.

"2. Reductions in the number of posts in a particular grade shall be decided by the appropriate budgetary authority under the budgetary procedure. The appointing authority shall, after consulting the Joint Committee, decide what types of posts are to be affected by such measures. The appointing authority shall draw up a list of the officials to be affected by such measures, after consulting the Joint Committee, taking into account the officials' ability, efficiency, conduct in the service, family circumstances and seniority."

The complainant asked the Tribunal principally: to quash on the ground of error of law, inasmuch as it was based on article 41 of the Staff Regulations, the decision to declare him non-active, so that he would continue to be employed until the completion of a termination procedure which suited his interests and the situation in which he was put because of the decision of the Federal Republic of Germany with regard to the staff of the Karlsruhe Centre; subsidiarily: should it prove difficult to keep the complainant on the Eurocontrol staff, to award him compensation for the wrongful and unlawful termination of his appointment, assessed in accordance with the rules on redundancy in the European Communities . . .; and to award costs, including the complainant's proven legal expenses, against the defendant organization".

The Tribunal did not find it necessary to consider the plea of irreceivability made by the Organization. The Tribunal observed that, in accordance with article 41 of the Staff Regulations, a declaration that a staff member had non-active status, following a reduction in the number of posts in the Agency, was a measure not in itself disciplinary and one which the Director-General was entitled to take, provided posts did have to be abolished, and provided he heeded a number of criteria set out in that article. The fact that the Director-General had to abolish posts was not in dispute in the present case. Nor did it appear from the document in the dossier that in taking the impugned decision he disregarded any of the criteria mentioned above. The Tribunal found that the Agency was under no duty to take exceptional and temporary measures before carrying out the dismissals forced on it by the need for a reduction in staff. Nor could the complainant rely on any provisions which he alleged apply in other organisations.

The Tribunal dismissed the complaint.

12. JUDGEMENT NO. 379 (18 JUNE 1979): PAULUS *v.* EUROPEAN ORGANIZATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

Complaint alleging mishandling of personnel file of a staff member by the Organization. Need to prove material or moral prejudice to claim compensation

The complainant claimed that two documents had been abstracted from his personnel file and that their abstraction had proved detrimental to the normal continuation of his career in the Agency. He stated that he would be properly compensated for the "material or moral prejudice, or both, which he had suffered" if the Agency were ordered to pay 1 Belgian franc as damages and to pay costs.

The Tribunal found that from the documents in the dossier it appeared that the Eurocontrol Agency had not caused the complainant any material or moral prejudice entitling him to compensation and therefore dismissed the complaint.

13. JUDGEMENT NO. 380 (18 JUNE 1979): BERNARD AND COFFINO *v.* INTERIM COMMISSION FOR THE INTERNATIONAL TRADE ORGANIZATION/ GENERAL AGREEMENT ON TARIFFS AND TRADE

Complaint contesting the introduction of a new salary scale for General Service staff to replace a scale established following negotiations between the administration concerned and the staff representatives. Effect of the establishment of the International Civil Service Commission on earlier practice in this field. Relationship in this field between the United Nations and its specialized agencies. Question whether the Director-General has a statutory or contractual, express or implied, obligation to negotiate with the staff representatives before introducing the new scale. Distinction between consultation and negotiation. Dismissal of the complaint by the Tribunal

The complainants, members of the General Service category of staff, objected to a new salary scale that the Director-General of the Organization applied to their category by a decision of 20 January 1978.

The salary scale so far in force was the uniform salary scale for that staff category, common to the United Nations Office and the United Nations specialized agencies in Geneva. The said scale was established by reference to the best prevailing salary rates in the city for whose determination surveys were carried out from time to time, although not at any set intervals, by methods decided on after consulting the staff association of the Organization. A dispute as to the results of the 1975 survey led to a strike by United Nations staff which was settled by an agreement on 23 April 1976 between a sole negotiator designated by the Secretary-General and by the executive heads of the Geneva-based agencies on the one hand, and by the staff representatives of the Organization concerned, on the other. It fixed the scale of salary increments which were supplemented by an agreement of 1 September 1976 providing for interim cost of living adjustments.

By resolution 31/193 B of 22 December 1976 the United Nations General Assembly instructed the International Civil Service Commission (ICSC) to carry out a new survey. A working party set up by the Commission consulted the representatives of the Geneva-based organizations and of their staffs and, despite strong objections expressed orally and in writing by the staff representatives, chose a method for collecting data which differed from the methods applied in earlier surveys. The staff representatives later took the view that the application of that method, to which they had objected, had been defective and therefore incorrect. They therefore rejected the Commission's recommendations and refused to join the administrations in working out the arrangements for applying them, on the grounds that they did not afford an acceptable basis for discussion. On 22 November 1977 the Secretary-General of the United Nations announced that the recommendations would be put into effect. On 20 January 1978 the Director-General of the defendant Organization adopted the same arrangements. The staff took the view that the new scale was to their disadvantage.

A request of reconsideration of the decision of 20 January 1978 having been rejected by the Director-General, the complainants appealed to the Tribunal asking it: (*a*) to find that the agreement of 23 April 1976 either created a clear understanding on prior negotiations or recognized that a clear understanding was already in existence, and (*b*) additionally, to find that the Director-General of ICITO-GATT had breached the agreement by unilaterally revising, without prior negotiations with the staff representatives, the salary scale of the General Service category he had fixed pursuant to the agreement. Accordingly, they also asked the Tribunal to quash the decision of the Director-General of ICITO-GATT dated 20 January 1978, introducing as from 1 January 1978 a new salary scale for General Service category staff in ICITO-GATT, and to restore, retroactively from 1 January 1978, the *status quo ante* on the basis of the 1976 agreements on salary scales and interim adjustments.

The complainants maintained that salary was regulated by the contract of appointment, that it could not be altered unilaterally and that the 1976 agreements fixing the salary scale did not provide for denunciation and remained in force from one survey to the next.

The defendant Organization contended that having been adopted by the United Nations, the new salary scale had *ipso facto* to be adopted by the defendant's administration. The Tribunal was competent only to review individual decisions, not general decisions like the one of 20 January 1978. Furthermore, a complaint on the individual decision applying the new scale to the complainants would now be time-barred. Basing itself on the Belchamber case decided by the United Nations Administrative Tribunal,[41] the defendant stressed that the 1976 agreement had been adopted without prejudice to the ICSC review of General Service category salaries with the full participation of the staff representatives, and that the latter's negative attitude had deprived of effect a number of articles of the statute of ICSC by stubbornly refusing consultation with the Organization on the ICSC recommendations.

In answer to the foregoing the complainants contended that the Organization had its own legal personality distinct from the United Nations, that the Tribunal's statute provided for the impugnation of decisions affecting "a class of officials", that it was pointless given the defendant's avowed automatic alignment on the United Nations' scale and that, in the Belchamber case, the United Nations Administrative Tribunal had been mistaken in holding that the staff representatives' "negative" attitude on the work and recommendations of ICSC had discharged the Secretary-General from his obligation to consult them. It was the Secretary-General who had wanted to change the results of the 1976 agreement.

With reference to its jurisdiction, the Tribunal rejected the first two paragraphs of the relief sought by the complainants concerning the 1976 agreement, observing that they might constitute considerations leading to the order but not part of the order itself. The Tribunal accepted its competence with reference to the remaining claim for relief, since they constituted an alleged breach of the contract or staff regulations.

As to the merits, the Tribunal, recalling the Belchamber case decided by the Administrative Tribunal of the United Nations, observed that although the facts and contentions of the present case were not exactly the same, the fundamental question was the same. It stressed that the defendant Organization had not drawn up staff regulations of its own but had provided for the application of the United Nations Staff Rules and Regulations and that the Tribunal would therefore hesitate to depart from any interpretation given to any regulation by the United Nations Tribunal. The Tribunal observed that article VIII of the Staff Regulations of the defendant Organization provided that a Staff Council elected by the staff should be established for the purpose of exercising continuous contact between the staff and the Director-General and that rule 108.1 provided that the Staff Committee should be consulted on questions of policy on, *inter alia*, salaries. Article VIII also provided for a joint Advisory Committee which, under rule 108.2, was to be composed of a Chairman selected by the Director-General from a list proposed by the Staff Council, of four members representing the Staff Council and of a like number representing the Director-General (these provisions are referred to, hereinafter, as article VIII). The Tribunal stressed the fact that since there were seven Geneva organizations, it was manifestly desirable that there should not be seven different and competing salary scales. However, since the seven had staff associations and some sort of provision for consulting them, but the provisions were by no means in the same terms, it would be highly improbable that seven different bodies engaged in separate discussions about figures, would all come up with precisely the same figure. Consequently the organizations had entered into a network of agreements between themselves to promote co-ordination. The name given to this network was "the common system".

The complainants, the Tribunal added, contended that the April agreement had qualified, on a contractual basis, the independent authority for the executive heads to set the General Service scales under the rules of the common system; and that, therefore, the complainants' contractual rights under the Staff Rules extended, aside from the actual scales of remuneration, to the agreed methodology for surveys, to the agreed procedure for processing data arising out of surveys and to their right to negotiate their salary with their employer on the basis of the results of such surveys.

[41] *Juridical Yearbook*, 1978, Chap. V, Sect. A, 6.

The Tribunal agreed that the April agreement had created or recognized a clear understanding that the executive heads would not exercise their power of settling salary scales without prior negotiation with the staff associations. It did not agree, however, that the April agreement bound the executive heads to use the same methodology in all subsequent surveys until they denounced the agreement.

As to the promise to negotiate before settling the salary scales, the Tribunal, unlike the complainants, concluded that it was an obligation neither specifically expressed in the complainants' contract of employment nor implied in it. That was a promise, the Tribunal maintained, that was not in need of incorporation into a contract of employment so as to make it effective. The sanction for the breach of it was the occurrence of the labour trouble which the agreement was designed to avoid.

As to the explanation advanced by the Organization that during the process which led to the April agreement it was engaged in consultation under article VIII — article which, the Tribunal added, formed part of the complainants' contracts — the Tribunal observed that in this way of looking at the case the question would become one of whether or not the Organization committed a breach of article VIII. Both sides asserted that consultation and negotiation were only two words for the same thing. Yet the Organization alleged that the Director-General offered to consult/negotiate before making the decision impugned while the complainants asserted that the Director-General was unwilling to consult/negotiate at all.

Unlike the parties, the Tribunal thought there was a clear distinction between consultation and negotiation. If the end product of the discussions was a unilateral decision, consultation was the appropriate word. If it was a bilateral decision, i.e. an agreement, negotiation was appropriate. The Tribunal was satisfied from the history of the discussions between the executive heads and the staff associations up to 1976 that the discussions were negotiations in the fullest sense.

The Tribunal found that, if the obligation to consult under article VIII was literally interpreted, it was not broken but that, if it was interpreted in the sense contended for by the complainants, it was broken. The literal interpretation was to listen and to exchange views. The Organization gave ample opportunity for consultation both before and after ICSC made its recommendations and was in full possession of the staff association's views.

If the obligation under article VIII extended to negotiation, the relevant subject matter of negotiation under staff rule 108.1 (*a*) was any question relating to policy on salaries. It would not be open to the Director-General to close part of this field and label it non-negotiable. There was no evidence that the complainants' staff association was unwilling to join any negotiations or discussions which covered the whole of the field; its refusal was to negotiate within the framework of the ICSC recommendations.

So the question, if it had to be decided within this framework, would be whether the duty of consultation in article VIII had by 1977 been qualified by the practice of the preceding 10 years or more and expanded to embrace negotiation. If negotiation was different from consultation, it was difficult to see how the change could be made otherwise then by an amendment made in accordance with the Staff Regulations. If what was relied on was the practice of the Organization, it would be necessary to examine minutely how the machinery of article VIII was used so as to see what implications could properly be drawn.

However, the Tribunal concluded that there was not a shred of evidence in the dossier that the machinery of article VIII had ever been used at all. The Tribunal found no evidence that the joint interagency bodies which successfully negotiated the April agreement and its predecessors were acting or purporting to act as the organs of any particular organization or under any particular set of regulations. In this situation, the Tribunal could not found its judgement on the hypothesis that in the discussions between the executive heads and the staff associations up to 1976 nothing was involved except the application of article VIII. Accordingly, the Tribunal gave its judgement not in the terms of reasoning of whether or not a breach of article VIII had occurred, but instead, in the terms of reasoning it set out above, namely, whether the obligation to negotiate said to have arisen from the April agreement had modified the Staff Regulations or had been incorporated into the individual contracts of the complainants. The Tribunal concluded that the breach of such an obligation, if any

such obligation existed, would not be a non-observance of the complainants' terms of appointment or of any staff regulation.

It therefore dismissed the complaint.

14. JUDGEMENT NO. 381 (18 JUNE 1979): DOMON AND LHOEST *v.* WORLD HEALTH ORGANIZATION

This case is broadly similar to the case dealt with in Judgement No. 380.

15. JUDGEMENT NO. 382 (18 JUNE 1979): HATT AND LEUBA *v.* WORLD METEOROLOGICAL ORGANIZATION

This case is broadly similar to the case dealt with in Judgement No. 380.

16. JUDGEMENT NO. 383 (18 JUNE 1979): RIEDINGER *v.* EUROPEAN PATENT ORGANISATION

The Tribunal recorded the withdrawal of suit by the complainant.

17. JUDGEMENT NO. 384 (18 JUNE 1979): PEETERS *v.* INTERNATIONAL PATENT INSTITUTE

The Tribunal recorded the withdrawal of suit by the complainant.

18. JUDGEMENT NO. 385 (18 JUNE 1979): PEETERS *v.* INTERNATIONAL PATENT INSTITUTE

The Tribunal recorded the withdrawal of suit by the complainant.

19. JUDGEMENT NO. 386 (18 JUNE 1979): HOUYEZ *v.* EUROPEAN PATENT ORGANISATION

The Tribunal recorded the withdrawal of suit by the complainant.

20. JUDGEMENT NO. 387 (18 JUNE 1979): NIVEAU DE VILLEDARY *v.* EUROPEAN PATENT ORGANISATION

The Tribunal recorded the withdrawal of suit by the complainant.

Chapter VI

SELECTED LEGAL OPINIONS OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Legal opinions of the Secretariat of the United Nations
(issued or prepared by the Office of Legal Affairs)

1. Legal consequences of an inability of the General Assembly to elect a non-permanent member of the Security Council

Statement made by the Legal Counsel of the United Nations at the 118th Plenary Meeting of the thirty-fourth session of the General Assembly

The question has been raised of the legal and constitutional consequences arising from the possible inability of the General Assembly to elect a non-permanent member of the Security Council which would thereby result temporarily in a Security Council of only 14 members instead of 15 members, as prescribed by the Charter.

Before addressing the consequences of such an eventuality, it is necessary to consider the function and role of the General Assembly in the election of non-permanent members of the Security Council and the nature of the obligation of the Assembly in this regard. Article 23 of the Charter provides, *inter alia*, that:

> "The General Assembly shall elect 10 other Members of the United Nations to be non-permanent members of the Security Council. . . ".

This provision is confirmed and clarified in rule 142 of the rules of procedure of the General Assembly, which states:

> "The General Assembly shall each year, in the course of its regular session, elect five non-permanent members of the Security Council for a term of two years."

In addition, rule 94 contains detailed provisions on the conduct of the elections which leave no doubt as to the absolute nature of the obligation of the Assembly, since the balloting must continue until a result is achieved — that is, ". . . and so on until all the places have been filled."

Finally, in the event that a member ceases to belong to a Council before its term of office expires, rule 140 requires the General Assembly to conduct a by-election at the next session to elect a member for the unexpired term.

From all those provisions it is clear that the Charter and the General Assembly's own rules of procedure establish the function and role of the Assembly as essentially procedural in nature — for example, the election of a non-permanent member of the Council — and it is equally clear that the obligation of the Assembly in this regard is absolute and mandatory.

In the past the Assembly has resolved difficulties of this nature by resorting to the technique of split terms of membership. That was the case in 1956-1957 with Yugoslavia and the Philippines, in 1960-1961 with Poland and Turkey, in 1961-1962 with Liberia and Ireland, in 1962-1963 with Romania and the Philippines, and in 1964-1965 with Czechoslovakia and Malaysia. It should, however, be noted that no split terms of membership have occurred since the enlargement of the Security Council in 1965 from 11 to 15 members.

The failure of the General Assembly to elect a non-permanent member would constitute a failure to comply with its constitutional functions and would violate the clear language of Article 23 of the Charter, the mandatory nature of which leads to the conclusion that a Security Council of less than 15 members would not be legally constituted in accordance with the Charter.

We now turn to the consideration of the consequences of such a failure of the General Assembly for the constitution and functioning of the Security Council. The question arises whether there are circumstances in which the Security Council may continue to function notwithstanding the fact that temporarily it may not be legally constituted in membership. The first such situation, which has never in fact occurred, is that foreseen in rule 140 of the rules of procedure of the General Assembly. It states:

> "Should a member cease to belong to a Council before its term of office expires, a by-election shall be held separately at the next session of the General Assembly to elect a member for the unexpired term."

That rule applies also to the Security Council. However, the fact that that rule is part of the rules of procedure of the General Assembly indicates, first and foremost, the obligation of the General Assembly to hold a by-election. But the implication of that rule is that it may occur that between the cessation of membership in the Council and the time of the by-election in the General Assembly the Security Council does not consist of the number of members prescribed by Article 23 of the Charter. A membership short of the prescribed number would not, therefore, affect the functioning of the Security Council in this situation. As pointed out, however, this situation has never developed, but even if it were to develop it would be a very exceptional circumstance and one, furthermore, over which the General Assembly could have no control.

A further situation in which the Security Council membership might no longer be in accordance with the constitutional requirements of the Charter would be during the period of time between the entry into force of a Charter amendment increasing the membership and the actual election of the new members. This very exceptional situation arose in connexion with the Charter amendments adopted by the General Assembly in 1963. The amendment increasing the membership of the Security Council was adopted by the General Assembly on 17 December 1963 and came into force on 31 August 1965. The Legal Counsel's opinion was sought on the legal position of the Security Council during the interim period between the entry into force of the amendment and the election of new members. The Legal Counsel was confronted with the alternatives presented by Articles 23 and 28 of the Charter respectively. In his opinion, he argued that, where the two alternatives are both possible, the

> "interpretation to be adopted is the one most consonant with the terms and purposes of the instruments as a whole. An interpretation tending to so extreme a consequence as a break in the functioning [of the Security Council] could not be accepted without clear support in the text itself. . .".

That legal opinion can be found in the *United Nations Juridical Yearbook, 1965*, on pages 224 and 225.

Therefore, notwithstanding the entry into force of the new Article 23 expanding the membership of the Council from 11 to 15, the Council continued to function under the previous régime until the election of the additional members.

A third situation in which the Security Council could be faced with a discrepancy between the prescribed membership and the actual membership could arise because of the inability of the General Assembly to reach agreement on an election. This situation, which we face today, may be distinguished from the two previous situations in which the temporary shortfall in membership was beyond the control of the Assembly although the Assembly has the ultimate obligation to fill the vacancy. The inability of the General Assembly to elect all the non-permanent members of the Security Council is not something which is beyond the control of the Assembly. On the contrary, the General Assembly is under an obligation to elect the members of the Council under the Charter. The question, then, is whether the Security Council may continue to function even when its membership is not the prescribed number as a result of a situation which is not beyond the control of the Assembly.

As indicated, Article 23 of the Charter provides that the Security Council "shall consist" of 15 Members of the United Nations. It is clear, therefore, that a legally constituted Security Council must have 15 members. However, Article 23 must be read in the context of the Charter as a whole, taking into particular consideration its object and purpose. The object and purpose of a treaty are of

particular importance in the interpretation of treaties establishing international organizations because constitutions, such as the Charter, as distinct from mere contracts, are designed to give effect to certain purposes and principles in a moving political context.

In this broader perspective, it must be recognized that the Members of the United Nations have conferred on the Security Council "primary responsibility for the maintenance of international peace and security" (Article 24), which is one of the purposes of the Organization (Article 1, paragraph 1), and that the Security Council "shall be so organized as to be able to function continuously" (Article 28).

Thus, at the very least, the compositional requirement of Article 23 must be balanced against the requirements of other provisions of the Charter concerning the functioning of the Council in so far as the non-compliance with the requirement of Article 23 does not run counter to the provisions of Article 27, which may be considered as an implied quorum provision.

Accordingly, an act of omission or the failure of the General Assembly to fulfil its constitutional obligations cannot be held to produce legal consequences so fundamental to the Organization as the paralysis of a principal organ. To argue otherwise would be to effect a constitutional amendment of the Charter through extra-constitutional means. Such a paralysis could have the gravest consequence for the whole system of the preservation of international peace and security, including a potential shift of well-established powers between the Security Council and the General Assembly.

The foregoing suggests that in theory and in practice the Security Council may continue to function notwithstanding the fact that it is not legally constituted.

In conclusion, while the failure of the General Assembly to elect a non-permanent member of the Security Council would be inconsistent with Article 23 of the Charter, such an act of omission could not produce legal consequences for the functioning of the Security Council, which is the organ primarily responsible for the maintenance of international peace and security. In such a situation, it would be the view of the Office of Legal Affairs that decisions of the Security Council taken in accordance with the relevant provisions of Article 27 of the Charter would constitute valid decisions. This is not to say, however, that the exceptional situation created by such a failure on the part of the General Assembly is either legally or constitutionally desirable. But in the interests of maintaining the authority of the Security Council and the balance of powers between the General Assembly and the Security Council, it is essential that the General Assembly should fulfil its obligations and responsibilities under the Charter.

31 December 1979

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2. QUESTION OF REPRESENTATION OF DEMOCRATIC KAMPUCHEA AT THE RESUMED THIRTY-THIRD SESSION OF THE GENERAL ASSEMBLY — PROVISIONAL SEATING OF CHALLENGED REPRESENTATIVES OF A MEMBER STATE — MAJORITY REQUIRED FOR RECONSIDERATION OF REPRESENTATIVES' CREDENTIALS ALREADY ACCEPTED BY THE GENERAL ASSEMBLY — THE GENERAL ASSEMBLY IS NOT BOUND BY OTHER UNITED NATIONS ORGANS' DECISIONS REGARDING REPRESENTATION

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

Credentials questions

1. The current thirty-third session of the General Assembly has accepted the credentials of the delegation of Democratic Kampuchea signed by the Deputy Prime Minister in charge of Foreign Affairs of that country.

2. The Security Council at its 2108th meeting held yesterday approved the report of the Secretary-General (S/13021) stating that the credentials of the delegation of Democratic Kampuchea to the Security Council emanating from the same authority were in order. Subsequently, the Council extended an invitation to Prince Sihanouk, Chairman of the delegation, to address the Council under rule 37 of its procedure, i.e. as a representative of a Member of the United Nations which is not a member of the Security Council.

3. In the light of the above, it is clear that it is the delegation of Democratic Kampuchea that should be seated in the General Assembly and in its Main Committees. If the question of representation is raised in plenary[1] and the credentials of the Kampuchean delegation are challenged, the provisions of rule 29 of the General Assembly rules of procedure become applicable. The rule provides as follows:

> "Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has given its decision."

Since the Credentials Committee has already reported on the credentials of the delegation of Kampuchea at the current session and the General Assembly has accepted these credentials, in the absence of conflicting credentials submitted by the new régime, a decision to refer the former credentials to the Credentials Committee once again would involve a re-opening of the matter and therefore such a decision would in effect amount to a motion for reconsideration of the decision concerning the credentials of the delegation of Kampuchea. Under rule 81 of the Assembly rules such a motion required a two-thirds majority for adoption by the Assembly.

Inclusion of an additional agenda item

4. Should any member of the Assembly propose the inclusion of the question of the representation of Democratic Kampuchea or even the question of the situation in Democratic Kampuchea as an additional item on the agenda for consideration at the resumed session this raises the question of the majority required for such a decision to be adopted by the Assembly. In this connexion it should be recalled that on 20 December 1978, at its 90th meeting, the General Assembly decided that "the present session would be suspended to be resumed on 15 January 1979 in order to proceed to a vote on item 32 (Policies of *apartheid* of the Government of South Africa) and to consider the reports of the Second Committee on agenda items 58 (*b*) to (*e*) and 70, the report of the Third Committee on agenda item 88 and Part IV of the report of the Fifth Committee on item 100". (In paragraph (*b*) of its second report (A/33/250/Add.1) the General Committee recommended that "the session should be resumed on 15 January 1979 for a period of one week to 10 days exclusively to conclude the consideration of the remaining items on the agenda of the current session".) It is clear from the foregoing that any decision to include a new item for consideration during the resumed session would involve a reconsideration of the General Assembly's earlier decision regarding its programme of work. Under rule 81 of the Assembly rules, a motion to reconsider a decision taken at the same session requires a two-thirds majority for adoption. If the motion to reconsider is adopted, then rule 15 of the General Assembly rules becomes applicable. Under this rule, additional items may be placed on the agenda if the General Assembly so decides by a majority of the representatives present and voting.

General observations

5. In connexion with the question of representation of a Member State in the United Nations, it is relevant to refer to General Assembly resolution 396 (V) of 14 December 1950. The operative parts of this resolution read as follows:

> "1. *Recommends* that, whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case;
>
> "2. *Recommends* that, when any such question arises, it should be considered by the General Assembly, or by the Interim Committee if the General Assembly is not in session;
>
> "3. *Recommends* that the attitude adopted by the General Assembly or its Interim Committee concerning any such question should be taken into account in other organs of the United Nations and in the specialized agencies;

[1] The Chairmen of the Second, Third and Fifth Committees should be advised that if the question is raised in their Committee they should state that it is not a matter which the Committee can consider and should draw the attention of the President to the fact that it has been raised.

"4. *Declares* that the attitude adopted by the General Assembly or its Interim Committee concerning any such question shall not of itself affect the direct relations of individual Member States with the State concerned;

"5. *Requests* the Secretary-General to transmit the present resolution to the other organs of the United Nations and to the specialized agencies for such action as may be appropriate."

It is clear from this resolution that the General Assembly considers itself the organ best suited to resolve the controversy where more than one authority claims to be the Government entitled to represent a Member State of the United Nations. Moreover, the General Assembly does not consider itself bound by decisions by other United Nations organs taken with regard to questions of representation.

12 January 1979

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3. THE ACCREDITATION OF A PERMANENT REPRESENTATIVE TO THE SECRETARY-GENERAL IN NEW YORK DOES NOT EXTEND TO THE UNITED NATIONS OFFICE AND THE ECONOMIC COMMISSION FOR EUROPE AT GENEVA UNLESS THIS IS EXPRESSLY STATED IN THE CREDENTIALS — THE PHRASE "FOR ALL ORGANS" INCLUDED IN SOME LETTERS OF ACCREDITATION TO THE SECRETARY-GENERAL SHOULD BE INTERPRETED AS REFERRING TO THE GENERAL ASSEMBLY, THE ECONOMIC AND SOCIAL COUNCIL, THE TRUSTEESHIP COUNCIL AND THE SECURITY COUNCIL — FORM OF ACCREDITATION OF PERMANENT REPRESENTATIVES AT GENEVA

Memorandum to the Chief of Protocol

1. You have requested me to explain to you the practice with respect to letters of accreditation (or credentials) as regards the accreditation of permanent representatives to the United Nations at Geneva (the United Nations Office and the Economic Commission for Europe). More specifically you asked me:

(*a*) Whether permanent representatives to the United Nations accredited to the Secretary-General were *ipso facto* considered to be accredited to the United Nations Office and the Economic Commission for Europe at Geneva;

(*b*) Whether the phrase "full powers for all organs" included in some letters of accreditation to the Secretary-General covered the Office and the Economic Commission; and

(*c*) If credentials (or a letter of accreditation) were to be issued to a permanent representative at Geneva, what authority should issue them?

2. Subject to a more detailed study of this question, and subject to any comments which Protocol at Geneva might have on the subjects I can inform you as follows:

(*a*) Although General Assembly resolution 257 A (III), which governs this question, mentions permanent missions to the European Office of the United Nations, since 1953 the annual report of the Secretary-General on permanent missions to the United Nations has not listed States maintaining a permanent mission in Geneva. Whenever the Secretary-General receives credentials accrediting a permanent representative at Geneva, Protocol takes note and transmits to Geneva.

(*b*) Unless expressly stipulated in the credentials of a permanent representative to the United Nations — *and there is no objection to this* — the practice is to consider the accreditation of a permanent representative to the Secretary-General in New York as not extending to the Office or the Commission at Geneva. Representatives of missions in Geneva are generally accredited to the Director-General of the Office, who represents the Secretary-General. There are practical reasons for this:

The Swiss federal authorities accord to permanent representatives at Geneva special privileges and immunities to which permanent representatives in New York are not entitled merely because they are accredited to the Secretary-General.

(*c*) The phrase "all organs" should be interpreted as referring to the General Assembly, the Economic and Social Council, the Trusteeship Council and the Security Council.

Although the International Court of Justice is a principal organ of the United Nations, the inclusion of the words "all organs" does not give permanent representatives the power to represent their countries before the Court. A party bringing a case before the Court notifies the Registrar of the name of the Agent who will represent it in the proceedings. Similarly, in order to make arrangements for communications to the States parties to proceedings before the Court, the Registrar requests the Minister for Foreign Affairs to inform him of the channel through which his Government wishes to receive such communications.

Also excluded are all specialized agencies, many of which are in Geneva and to which permanent representatives should be accredited if their Governments so desire.

(*d*) Unlike letters of accreditation or credentials for permanent representatives to the Secretary-General, which must be issued either by the Head of the State or Government or by the Minister of Foreign Affairs, the practice as regards the form of credentials — or letters of accreditation — for permanent representatives at Geneva is, to my knowledge, to accept as valid credentials any communication, provided that it sets out the clearly expressed intention of the Government concerned.

23 October 1979

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4. LEGAL BASIS FOR THE OBSERVER STATUS OF THE PALESTINE LIBERATION ORGANIZATION — APPLICABILITY OF CERTAIN PROVISIONS OF THE HEADQUARTERS AGREEMENT BETWEEN THE UNITED NATIONS AND THE HOST COUNTRY — LACK OF ENTITLEMENT OF PLO OBSERVER TO DIPLOMATIC PRIVILEGES AND IMMUNITIES — APPLICABILITY OF LOCAL ZONING LAWS AND REGULATIONS TO PROPERTY ACQUIRED BY PLO IN THE HEADQUARTERS DISTRICT

Letter to a private lawyer

1. This is in reply to your letter, in which you requested me to give you a legal opinion on the legal status of the Office of the Permanent Observer of the Palestine Liberation Organization to the United Nations and whether the Palestine Liberation Organization would be required to comply with the City of New York's zoning laws if it purchases a townhouse to serve as an office and a residence for the Permanent Observer in a residential zone on the East Side of Manhattan.

2. By its resolution 3237 (XXIX) of 22 November 1974, entitled "Observer status for the Palestine Liberation Organization", the General Assembly issued a standing invitation to the Palestine Liberation Organization to participate in the sessions and the work of the General Assembly and in the work of all international conferences convened under its auspices in the capacity of observer.

3. The resolution just mentioned provides the legal basis for the observer status that the Palestine Liberation Organization has in the United Nations.

4. The Permanent Observer appointed by the Palestine Liberation Organization pursuant to General Assembly resolution 3237 (XXIX) benefits from the following provisions of the Headquarters Agreement between the United Nations and the host State:

(i) Section 11, which provides that the federal, state or local authorities of the United States "shall not impose any impediments to transit to or from the headquarters district of . . . persons invited to the headquarters district by the United Nations" and that "the appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the headquarters district";

(ii) Section 12, which provides that section 11 is applicable irrespective of relations between the Governments of the persons referred to in the latter section and the host State; and

(iii) Section 13, which provides that the host State shall grant visas "without charge and as promptly as possible" to persons referred to in section 11 and also exempts such persons from being required to leave the United States on account of any activities performed by them in their official capacity.

5. In addition to the foregoing privileges and immunities, it is my belief that it necessarily follows from the obligations imposed by Article 105 of the Charter of the United Nations that the

Palestine Liberation Organization Observer enjoys immunity from legal process in respect of words spoken or written and all acts performed by members of the delegation in their official capacity before relevant United Nations organs.

6. The above privileges and immunities represent in my view the scope of such privileges and immunities which the host State is obliged under existing international instruments to accord to the Palestine Liberation Organization. The host State may, of course, as a matter of courtesy, extend a wider variety of privileges and immunities to the delegation. However, this is for the Palestine Liberation Organization a matter to negotiate with the host State.

7. The Permanent Observer for the Palestine Liberation Organization is not entitled to diplomatic privileges or immunities under the Headquarters Agreement between the United Nations and the United States or under other statutory provisions applicable in the host State. Thus whatever facilities the Palestine Liberation Organization observers may be granted in the United States other than those to which they are entitled under the provisions of the Headquarters Agreement referred to above are merely gestures of courtesy by the United States authorities.

8. In the light of the foregoing and in the absence of any legal basis for an exemption it would appear that the local zoning laws and regulations which apply to all properties including those purchased by foreign Governments for official purposes would apply also to any property purchased by the PLO in the Headquarters District.

9. However, we have had informal consultations with the United States authorities and they have indicated to us that the question of a mission having an Office in a residential zone has never been raised.

19 November 1979

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5. QUESTION WHETHER GENERAL ASSEMBLY APPROPRIATIONS FOR THE UNITED NATIONS INTERNATIONAL SCHOOL CAN BE CONSIDERED "EXPENSES OF THE ORGANIZATION" WITHIN THE MEANING OF PARAGRAPH 2 OF ARTICLE 17 OF THE CHARTER

Memorandum to the Under-Secretary-General for Administration, Finance and Management

1. This is in response to your request of 28 November for a legal opinion as to whether appropriations authorized by the General Assembly for the United Nations International School (UNIS) can be considered "expenses of the Organization" within the meaning of paragraph 2 of Article 17 of the Charter.

2. Although UNIS is legally separate from the United Nations — it is a New York State not-for-profit corporation, operating as an educational institution under the general supervision of the New York State Board of Regents — it is clear that the school was established for the purpose of assisting members of the staff of the United Nations stationed at Headquarters, and in particular expatriate staff, in educating their children. This purpose is recognized in section 1 (*a*) of article II of the instrument governing the School (the Constitution of the Association for the United Nations International School), and is supported by the provisions in articles III and IV concerning the governance of the school, whereby its Board of Trustees consists predominantly of persons drawn from a list nominated by the Secretary-General or elected by members of the Association, who must be members of the Secretariat of the United Nations or specialized agencies, or members of a permanent mission or otherwise accredited to the United Nations, or parents of a child attending the school.

3. The General Assembly has repeatedly recognized that "the continuing functioning of the School is one of the important non-financial factors contributing to the recruitment and retention of international staff" (e.g. resolutions 1102 (XI) and 1228 (XII)) and even that "the provision of adequate accommodation for UNIS is in the best interest of the Organization" (resolution 1297 (XIII)). Indeed, at one time the General Assembly approved in principle the construction of UNIS on part of the Headquarters site (resolution 2003 (XIX)), which site is explicitly dedicated

for the purposes of the Organization; later the Assembly authorized the Secretary-General to accept from the City of New York an alternative site (resolution 2123 (XX)).

4. Indeed, the preoccupation of the General Assembly with UNIS is indicated by the fact that it adopted resolutions or decisions relating to the School at least at 16 of its regular sessions, starting in 1957. But even before that, starting in 1951 and in many years thereafter, it specifically authorized appropriations either for the general purpose of the School or for restricted ones, such as its building fund. In addition, it authorized the Secretary-General to undertake various functions and responsibilities in respect of the School.

5. There can be no doubt that the education of the children of staff members and of members of missions at their duty stations is a legitimate concern of the Organization, not merely from a social point of view but also to attract to and keep at such duty stations persons who will enhance the work of the Secretariat and of permanent missions accredited to the Organization. From the beginning of the Organization the General Assembly has acted on that concern in several ways: by authorizing and from time to time increasing education grants for expatriate members of the Secretariat, or by subsidizing UNIS in general or in respect of particular activities. In view of their purpose, all these are legitimate expenses of the Organization, though it is obviously a matter of discretion for the Assembly to what extent and by what means financial and other support for such purposes should be given. But the mere fact that payments are authorized to or for the support of an entity separate from the United Nations, such as a school or hospital or other enterprise to benefit United Nations-related persons, does not affect the legitimacy of an expenditure made for a purpose closely related to the administration and operation of the Organization.

30 November 1979

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6. Question concerning the characterization of the United Nations Fund for Population Activities as a subsidiary organ of the General Assembly

Memorandum to the Office of Secretariat Services for Economic and Social Matters

1. You have requested an opinion from the Legal Office on whether the characterization of the United Nations Fund for Population Activities (UNFPA) as a subsidiary organ of the General Assembly in the draft resolution A/C.2/34/L.50 now being considered in the Second Committee correctly reflects the status of the Fund. It is useful in this connexion to review briefly the relevant resolutions of the General Assembly relating to the establishment and administrative structure of the Fund.

2. By its resolution 2211 (XXI) of 17 December 1966 the General Assembly called upon the organizations of the United Nations System to provide assistance in the field of population. In response to this resolution the Secretary-General established in 1967 the United Nations Trust Fund for Population Activities. Its status then was that of a trust fund of the Secretary-General subject to the financial rules and regulations governing the administration of such funds. In 1969 the Secretary-General entrusted the administration of the Fund to the Administrator of the United Nations Development Programme and changed its name to United Nations Fund for Population Activities. This change did not affect its status as a trust fund of the Secretary-General. Since that time UNFPA with a separate secretariat within the framework of UNDP has developed quickly and its financial resources have increased substantially. On 14 December 1971 through its resolution 2815 (XXVI) the General Assembly requested the Secretary-General in consultation with the Administrator of UNDP and the Executive Director of UNFPA to improve the administrative machinery of the Fund and to inform the General Assembly and the Economic and Social Council of the steps taken by him in the implementation of that resolution and of any recommendations he might wish to make in that regard.

3. The Secretary-General submitted his recommendations to the Economic and Social Council at its fifty-third session and to the General Assembly at its twenty-seventh session. In

presenting his submissions the Secretary-General stated *inter alia* that the UNFPA had reached a size, and was undertaking a range of activities which made it advisable to change the character of the Fund from a trust fund of the Secretary-General into a fund established under the authority of the General Assembly.

4. By its resolution 3019 (XXVII) of 18 December 1972 the General Assembly approved the Secretary-General's recommendation referred to in the preceding paragraph to change the character of the Fund and decided to place it under the authority of the General Assembly (operative paragraph 1) and decided further "without prejudice to the overall responsibilities and policy functions of the Economic and Social Council, that the Governing Council of the United Nations Development Programme, subject to conditions to be established by the Economic and Social Council, shall be the governing body of the United Nations Fund for Population Activities..." (operative paragraph 2).

5. As a consequence of the adoption of General Assembly resolution 3019 (XXVII) the Fund ceased to be a trust fund of the Secretary-General and became a Fund under the authority of the General Assembly with an intergovernmental governing body, having its own financial regulations and rules. It thus ceased to be a trust fund, which is merely a financial account, and became a subsidiary organ of the Assembly similar to other Funds having intergovernmental supervisory bodies such as UNICEF, the Capital Development Fund and the United Nations Special Fund. In this respect, it should be noted that Article 22 of the Charter authorizes the Assembly to create "subsidiary organs" which are to be distinguished from principal organs specified in the Charter or completely autonomous bodies which have to be established by separate intergovernmental agreement.

6. From a legal standpoint, therefore, the wording in operative paragraph 1 of the draft resolution contained in document A/C.2/34/L.50 correctly reflects the situation that has existed since the adoption of resolution 3019 (XXVII). Adoption of this operative paragraph as it is now worded would merely confirm the existing arrangements and would not in our view involve any new budgetary implications relating to the administrative support of the Fund.

20 November 1979

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7. QUESTION WHETHER THE COOK ISLANDS ARE ELIGIBLE TO RECEIVE A UNITED NATIONS DEVELOPMENT PROGRAMME INDICATIVE PLANNING FIGURE (IPF) INDEPENDENCE BONUS — DISTINCTION BETWEEN SELF-GOVERNING TERRITORIES AND INDEPENDENT STATES UNDER INTERNATIONAL LAW

Memorandum addressed to the Chief of Division One, Regional Bureau for Asia and the Pacific of the United Nations Development Programme

1. I refer to your memorandum of 17 May 1979 in which you requested our opinion on whether the United Nations Development Programme can consider the Cook Islands as eligible to receive an indicative planning figure (IPF) independence bonus.

2. The Governing Council of UNDP decided in July 1976 that each recipient country "that had gained independence since the start of 1973 should have its IPF increased in the amount of $500,000 plus 15 per cent of the IPF." (Official Records of the Economic and Social Council, 1976, Supplement No. 12 (E/5846/Rev.1)). The Council pointed out in its report that it had decided that the IPFs of newly independent countries should be recalculated in order to provide them with increased resources to meet their special acute needs (para. 251). Accordingly, a country will be eligible to receive the independence bonus only if it can be considered as an independent country which gained its independence since the start of 1973.

3. The Territory of the Cook Islands is a self-governing territory in free association with New Zealand. New Zealand, in consultation with the government of the Cook Islands, discharges the responsibilites for the external affairs and defence of the Cook Islands and under the same arrangements the Cook Islanders remain New Zealand citizens. The question is whether the Cook Islands in their present status, can be considered as an independent country for the purposes of the

above-mentioned decision of the Governing Council. The term "independent country" (or "independence") has not been defined by the Governing Council, but the legislative history indicates that the decision was intended to apply to fully sovereign independent States within the meaning of that term in international law and the practice of the United Nations. In his explanatory note on the purposes of the independence bonus the Administrator of UNDP stated:

> "... the present intention is to provide additional resources for 1977-1981 to countries whose national independence was achieved in the more recent past. For example, there are 10 recipient countries whose independence has been gained since the start of 1973."[2]

In a foot-note to that observation, the Administrator listed the following ten States: Angola, Bahamas, Cape Verde, Comoros, Granada, Guinea-Bissau, Mozambique, Papua New Guinea, Sao Tome and Principe, and Suriname. All these States are sovereign independent States and Member States of the United Nations.

4. An independent State under the generally-accepted definition in international law must have *inter alia* one central political authority — the government which represents the State internally and externally. In that sense independence means that a state may conduct its internal and international affairs unrestricted legally except through the operation of international law. Thus, a self-governing territory which does not possess the full capacity to enter into foreign relations cannot be regarded as a sovereign independent state. In other words, every independent country is by definition also a self-governing territory but a self-governing territory is not necessarily an independent country.

5. This distinction between "self-government" and "independence" is reflected also in the Charter of the United Nations. In Article 76 (*b*) of the Charter the basic objective of the trusteeship system is declared to be the "progressive development towards self-government or independence." Thus "self-government" and "independence" become alternative goals. Furthermore, it is clear from the legislative history of Articles 73 and 76 that these terms refer to different situations (for more detailed information, see Goodrich, Hambro and Simons, *Charter of the United Nations, Commentary and Documents*, 3rd ed., p. 468). This distinction was also pointed out by the General Assembly. In resolution 742 (VII) of 27 November 1953 the General Assembly considered that "the manner in which Territories referred to in Chapter XI of the Charter can become fully self-governing is primarily through the attainment of independence, although it is recognized that self-government can also be achieved by association with another State or group of States if this is done freely and on the basis of absolute equality." A list of factors indicative of the attainment of independence annexed to that resolution, point out that a given territory be considered as independent if it has international status together with internal self-government. The factors which indicate the international status of a territory include full international responsibility of the territory, eligibility for membership in the United Nations, power to enter into direct relations of every kind with other governments and with international institutions and sovereign right to provide for the national defence.

6. In view of the essential characteristics of independent States as described above, it follows that the status of the Cook Islands is not sovereign independence in the juridical sense. Moreover, the General Assembly in its resolution 2064 (XX) of 16 December 1965 on the question of the Cook Islands reaffirmed the responsibility of the United Nations "to assist the people of the Cook Islands in the eventual achievement of full independence, if they so wish, at a future date". This resolution which was adopted in view of the change in the status of the Cook Islands further indicates that the Cook Islands have not attained yet full independence within the meaning of that term in the United Nations terminology.

7. Furthermore, even if the present status of the Cook Islands could be considered as "independent" for the purpose of the independence bonus, it appears that they would have to be considered as having already gained such "independence" before 1973 and not after 1973 as required by the decision of the Governing Council. The general elections for the Cook Islands Legislative Assembly were held on 20 April 1965. The Constitution, as amended by the New

[2] See document DP/199, Note by the Administrator, para. 5.

Zealand Parliament at the request of the Legislative Assembly, was adopted by the Cook Islands Legislative Assembly on 20 July and was brought into force on 4 August 1965. By the same act the Legislative Assembly resolved that the Cook Islands shall be self-governing in free association with New Zealand and it requested New Zealand to discharge the responsibilities for the external affairs and defence of the Cook Islands. The General Assembly in its resolution 2064 (XX) of 16 December 1965 decided that since the Cook Islands have attained full internal self-government, the transmission of information in respect of the Cook Islands — under Article 73 (*c*) of the Charter — is no longer necessary. In an exchange of letters of 4 May 1973 between the Prime Minister of New Zealand and the Premier of the Cook Islands, the New Zealand Government clarified the nature of the special relationship between the Cook Islands and New Zealand. These letters were tabled in the Cook Islands Legislative Assembly and in the New Zealand Parliament as an indication of "the true nature" of the ties between the two countries. It appears that these letters did not purport to change the status of the Cook Islands as already resolved by the legislative bodies of both countries in 1965. The sole purpose of these letters was to reaffirm the existing arrangements between the two countries and clarify some outstanding issues.

8. In the light of the above, it is our view that under the terms of the 1976 Governing Council's decision the Cook Islands are not eligible to receive a UNDP indicative planning figure (IPF) independence bonus. However, it should be noted that the Governing Council has the authority to apply the principles of the independence bonus to self-governing territories in the same way as it was applied in the case of Namibia.

8 June 1979

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8. QUESTION WHETHER THE LAW ENFORCEMENT TECHNIQUE OF "CONTROLLED DELIVERY" MAY BE CONSIDERED IN COMPLIANCE WITH INTERNATIONAL CONVENTIONS ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES — THE SAID CONVENTIONS PROVIDE STATE PARTIES WITH A LEGAL POWER TO SEIZE AND CONFISCATE ILLICIT DRUGS BUT DO NOT CREATE A LEGAL OBLIGATION TO DO SO — COMPATIBILITY OF THE "CONTROLLED DELIVERY" TECHNIQUE WITH THE OBJECT AND PURPOSE OF THE CONVENTIONS CONCERNED — THE SAID TECHNIQUE AS A LEGITIMATE EXERCISE OF THE DISCRETION OF STATE PARTIES AS TO THE MANNER IN WHICH THE AUTHORITY TO SEIZE AND CONFISCATE SHOULD BE EXERCISED

Letter to the Acting Secretary of the Commission on Narcotic Drugs

1. This is in response to your letter of 21 June 1979 in which you referred to this Office a request for a legal opinion on the question of whether the law enforcement technique of "controlled delivery" can be considered as being in compliance with the provisions of the international treaties on narcotic drugs and psychotropic substances.

2. As you have explained, "controlled delivery" consists of permitting the passage through the territory of one or several states of consignments of illicit drugs under surveillance but without interfering with the shipment itself. This technique, the purpose of which is to enable law enforcement agencies to track illicit shipments from origin to destination, is of recent origin. The 1961 Single Convention and the 1971 Convention on Psychotropic Substances, however, contain provisions to the effect that any drugs, substances and equipment in illicit traffic shall be liable to seizure and confiscation. The question raised is one of treaty interpretation: is the technique of "controlled delivery" compatible with the provisions of the 1961 and 1971 Conventions and, in particular, articles 37 and 22 thereof?

3. Article 37 of the Single Convention and article 22, paragraph 3, of the Psychotropic Substances Convention are virtually identical provisions on seizure and confiscation. In both cases, the drugs, substances and equipment which are the subject of the illicit traffic "shall be liable to seizure and confiscation". The question of interpretation posed in the present case is whether this language imposes a legal obligation on the Parties to effect immediate seizure and confiscation or whether it merely confers upon the Parties the duty to authorize seizure and confiscation while leaving them a degree of discretion in deciding how to exercise such authority.

4. The general rule of interpretation of treaties as stated in the Vienna Convention on the Law of Treaties, 1969 (not yet in force but which may be considered as the authentic codification of the law) is that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (article 31, paragraph 1).

5. The good faith interpretation of the Conventions under consideration here is self-evident and we need not concern ourselves with this aspect of the problem. The present opinion, therefore, rests on a consideration of the ordinary meaning to be given to the expression "shall be liable to seizure and confiscation" in the context and in the light of the object and purpose of the treaties in question.

6. The ordinary meaning of the expression "shall be liable to seizure and confiscation" is that the drugs are liable to seizure, that is to say that the authority to seize and confiscate exists. This is not the same thing as saying that there is a legal obligation to seize and confiscate. The French and Spanish versions of the text corroborate this view. The French text reads "pourront être saisis et confisqués", while the Spanish text reads "podran ser objeto de aprehension y decomiso".

7. We are aware that the Commentary on the Single Convention[3] maintains that the expression in question is in fact open to two interpretations, that of a legal obligation and that of providing for the legal power of the competent authorities to act. Basing itself on the official records of the 1961 Conference, the Commentary states that the "stronger view at the Conference favoured a definite obligation of Parties to seize and confiscate the drugs, substances and equipment concerned". (*Commentary*, p. 442.) An examination of the *Official Records* of the 1961 Conference[4] shows that some delegates were unclear as to the precise meaning of the expression and that the expression was possibly ambiguous as to the establishment of a legal obligation. The *Official Records* do not by any means establish that a "stronger view" favouring a definite obligation prevailed among the delegates. Indeed, if this had been the case the Conference would have had the opportunity to adjust the English, French and Spanish texts accordingly.

8. In addition, the *Commentary* relies heavily on a statement made by the Legal Adviser of the Conference who stated that "in his opinion the purpose of (the provision) was to compel a country which had no law authorizing seizure and confiscation to adopt such a law." (*Official Records*, vol. II, p. 246.) This statement does not, in our view, establish the proposition that there is a legal obligation to seize and confiscate; it merely establishes that the authority to seize and confiscate should be enacted.

9. Turning to an examination of the meaning of this expression in the light of the object and purpose of the treaty, it must be asked whether the interpretation put forward in the preceding paragraph is consistent with the object and purpose of the treaties. The preamble to the 1961 Convention states that "effective measures against abuse of narcotic drugs require coordinated and universal action", while article 4 calls upon the Parties to take legislative and administrative action to co-operate with other States in the execution of the provisions of the Convention. These general obligations are specified in greater detail in article 35 of the Single Convention and article 21 of the Psychotropic Convention. In particular, the Parties are required to assist each other in the campaign against the illicit traffic in drugs and ensure co-operation and co-ordination. It would seem to be clear, therefore, that even though the technique of "controlled delivery" had not been perfected at the time of the adoption of the Convention, the international character of the campaign against illicit traffic and the framework for international co-operation and co-ordination was fully perceived and provided for. Since the purpose of the "controlled delivery" technique is to break the entire chain of the traffic rather than one of its links, it must be recognized that the technique is fully compatible with the object and purpose of the Convention.

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[3] *Commentary on the Single Convention on Narcotic Drugs*, 1961 (United Nations publication, Sales No. 73.XI.1).

[4] *Official Records of the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs* (United Nations publication, Sales No. 63.XI.4-5 (2 vols.)).

10. In conclusion, therefore, we would be of the opinion that articles 37 and 22 (3) of the 1961 Single Convention and 1972 Psychotropic Substances Convention, respectively, while establishing a legal obligation to authorize seizure and confiscation of illicit drugs, provide a measure of discretion to States parties as to the manner in which this authority should be exercised. The technique of "controlled delivery" would constitute a legitimate exercise of this discretion since it is clearly compatible with the object and purpose of the treaties in question.

11. We have taken note of the fact that the technique of "controlled delivery" has been employed by a number of States Parties for some time and that, therefore, a presumption may be said to exist as to its legality. We would not be of the opinion that a formal statement of this interpretation is necessary unless a question to this effect is raised by a State Party.

12 July 1979

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9. RELATIONSHIP BETWEEN CHAIRMANSHIP AND MEMBERSHIP OF THE INTERNATIONAL CIVIL SERVICE COMMISSION — QUESTION WHETHER THE CHAIRMAN (OR VICE-CHAIRMAN) MAY RESIGN THE CHAIRMANSHIP (OR VICE-CHAIRMANSHIP) WHILE REMAINING A MEMBER OF THE COMMISSION

Internal memorandum

1. The Chairman of the International Civil Service Commission has informed the Secretary-General that he wishes to resign the Chairmanship of the Commission on 1 September 1979 but that he intends to continue his membership through 31 December 1982. Since article 2 of the Commission's Statute provides that "the Commission shall consist of fifteen members appointed by the General Assembly, of whom two, who shall be designated Chairman and Vice-Chairman respectively, shall serve full-time", it follows that the Chairman occupies one of the fifteen seats on the Commission. The question arises as to whether or not the Chairman is entitled to make a distinction between the chair and the seat, choosing to resign the former and retain the latter. The answer is that such a distinction would be insupportable since it might conflict with the requirements set forth in articles 2, 3 and 4 of the Statute.

2. As indicated above, article 2 of the Statute distinguishes between the Chairman and Vice-Chairman and the other members of the Commission. The Chairman and Vice-Chairman are required to serve full-time; the other members serve only part-time. Article 3, paragraph 2 of the Statute provides that "the members of the Commission, no two of whom shall be nationals of the same State, shall be selected with due regard to geographic distribution". Since the Chairman and Vice-Chairman are themselves members of the Commission, the requirements as to geographic distribution applies to them.

3. Article 4, paragraph 1 of the Statute provides that "after appropriate consultations ... the Secretary-General ... shall compile a list of candidates for appointment as Chairman, Vice-Chairman and members of the Commission ...". Article 4, paragraph 2 provides that "in the same way, the names of candidates shall be submitted to the General Assembly to replace members whose terms of office have expired or who have resigned or otherwise ceased to be available". Though paragraph 1 refers to "candidates for appointment as Chairman, Vice-Chairman and members of the Commission", it is apparent that the Chairman and Vice-Chairman are themselves members of the Commission and that reference to other members of the Commission was intended. This interpretation is supported by the language of paragraph 2, which refers to the replacement of "members" without distinction as between the thirteen who serve part-time and the two who serve full-time as Chairman and Vice-Chairman.

4. The language of article 4, paragraph 2 with its reference to "members" without distinction and their "terms of office" again without distinction makes it quite clear that the General Assembly views membership as primary and Chairmanship as secondary as far as the individual's relationship to the Commission is concerned. The Assembly's view is reflected in its resolutions on the matter: an individual is *first* appointed as member and then *designated* as Chairman. It would appear that the

only way for an individual to sever his relationship with the Commission is to resign his appointment as member. If the individual happens to be Chairman, his function would then be extinguished with the appointment on which it depends.

5. If it were permissible for an individual to retain his seat while resigning the chair, it might be difficult, if not impossible, for the Secretary-General to discharge his responsibilities under articles 2 and 3 of the Statute. When making his recommendations for Chairman and Vice-Chairman under article 4, the Secretary-General must ensure that both candidates are available full-time and that the two candidates — as individuals and as a pair — satisfy equitable geographic distribution. The Secretary-General has an easier task in recommending the 13 part-time members who need only satisfy equitable geographic distribution overall. His task could be complicated enormously if he were constrained to identify a new Chairman among the other members, only one of whom, the Vice-Chairman, is presumed to be available full-time, and any one of whom might, through no fault of his own, distort equitable geographic distribution. The consultations envisioned under article 4 might be as difficult as the process of identification and the result might be impasse in the selection of a new Chairman.

6. Despite the inherent difficulties, it seems that it may be possible on this occasion to identify a new Chairman among the other members. The possibility should be regarded as a fortuity in this instance and the formulation to be employed in connexion with the outgoing Chairman should be considered carefully. It would seem desirable to employ a formulation along the following lines:

"At its ____ plenary meeting, on _____ 1979, the General Assembly, on the recommendation of the Fifth Committee:

"(*a*) Noted Mr. _____'s decision to relinquish his functions as Chairman of the International Civil Service Commission as from 1 September 1979;

"(*b*) Confirmed Mr. _____'s appointment as a member of the International Civil Service Commission for the remainder of the four-year term which began on 1 January 1979;

"(*c*) Designated _____ [and _____] as Chairman [and Vice-Chairman, respectively,] of the International Civil Service Commission until [a date to coincide with the end of the present term of office] [respectively]."

A formulation of this kind would serve as a precedent, if any is needed, to establish the principle that the Chairman of the Commission cannot bind the General Assembly by making an election between Chairmanship and membership.

24 July 1979

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10. Question whether a unit of the Secretariat may perform functions "under the guidance" of organs other than the Secretary-General — Exclusive responsibility of the Secretary-General with regard to the staff of the Organization

Memorandum to the Secretary-General

1. You have requested my advice with respect to the text of operative paragraph 2 of the draft resolution on the question of Palestine (A/34/L.42) which requests the Secretary-General to ensure that the "Division" for Palestinian Rights (now the Special Unit on Palestinian Rights) performs its functions and responsibilities in consultation with the Committee on the Exercise of the Inalienable Rights of the Palestinian People and under its guidance."

2. In nearly all resolutions adopted by United Nations bodies, the Secretary-General is entrusted with certain tasks, this being in accordance with Article 98 of the Charter, which provides that "the Secretary-General shall perform such other functions as are entrusted to him by these organs." However, in the discharge of the tasks entrusted to the Secretary-General and to the Secretariat the principle that the Secretary-General and the staff act independently has never been

challenged. In other words, the organs of the Organization can legitimately claim to impose certain tasks upon the Secretary-General (the Secretariat), but they are not to determine how the Secretary-General is to carry out these tasks. Members of the Secretariat are to act under the sole authority of the Secretary-General and cannot properly accept instructions from any other authority as to the tenor or direction of their activities.

3. If the draft resolution is adopted as now worded it would require the Secretary-General to ensure that a unit of the Secretariat which forms part of "the staff of the Organization" performs its tasks in consultation with and under the guidance of the Committee on the Exercise of the Inalienable Rights of the Palestinian People. The words "under the guidance of" are generally accepted as being synonymous with the words "under the direction of" or "under the control of". As a matter of fact, the French translation of the same term in General Assembly resolution 32/40 of 2 December 1977 and in the French version of the draft resolution (A/34/L.42) is "sous la direction de". Furthermore, there seems to be a clear contradiction between the expressions "in consultation with" and "under its guidance". "Consultation" is a meaningful exchange of views or discussion where one party does not impose its views upon the other party, whereas "guidance" implies that the guiding party expects the guided party to follow its directions.

4. It is clear, therefore, that from a legal standpoint such a request would impinge on the exclusive responsibilities of the Secretary-General with regard to the staff of the Organization and would consequently be in violation of the constitutional provisions regarding the independence of the Secretariat.

30 November 1979

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11. Question concerning non-United Nations use of the United Nations Environment Programme symbol — Analogy with non-United Nations use of the United Nations emblem — Discretion of the Secretary-General on the matter

Letter to the Legal Liaison Officer at the United Nations Environment Programme

1. We have been consulted in the past in a few instances involving non-United Nations use of the UNEP symbol. First of all, I should say that there is — at least to my knowledge — no "standard procedure" or policy for dealing with such cases. The action we have recommended in the past was based on a number of facts and considerations, which I shall try to outline below.

2. The "Only One Earth" symbol was chosen in 1971 by the secretariat of the United Nations Conference on the Human Environment as the "official insignia" of the Conference. As you will see from the enclosed press release (HE/14 of 14 June 1971), it was designed by a United Nations staff member, and, therefore, all rights in it are vested in the United Nations (staff rule 112.7).

3. It appears that the secretariat of the Conference has permitted liberal use of the symbol for publicity purposes and it may therefore be difficult at this stage to attempt to place legal restrictions on its use. No copyright was taken on it at the time, nor has any action subsequently been taken, as far as I know, by a political organ (similar to that taken by the General Assembly in resolution 92 (I) with respect to the United Nations emblem) to protect the symbol from misuse. Consequently, anyone desiring to use the symbol might argue that it is in the public domain. (On the other hand, it may be noted that the symbol probably enjoys some protection under existing trade mark laws and article 6 of the Paris Convention for the protection of industrial property,[5] as an "emblem of an international inter-governmental organization".)

4. Potential problems arose when UNEP began using the symbol as its own distinctive sign (in its letterhead and on its documents, official publications and other publicity materials) and hence non-UNEP use of the symbol might be understood to imply an official connexion with UNEP. In one

[5] See United Nations, *Treaty Series*, vol. 828, p. 327.

of the first cases which was brought to our attention, involving a request for use of the symbol by a non-United Nations body, we asked the UNEP secretariat to clarify whether the symbol was intended for use solely by UNEP as its distinctive sign, or whether the UNEP secretariat now viewed it, bearing in mind the past policy of liberal use, as embodying the over-all concept of environment improvement and *not as representing UNEP exclusively.*

5. We did not receive an answer to our questions, but I believe that a reasonable position, which takes account of the past history of the "Only One Earth" symbol, would be that the symbol should continue to serve primarily as the distinctive sign of UNEP, as it has become generally known as such, but that in special circumstances a limited, clearly defined and (as far as possible) controlled non-UNEP use of it should be permitted in appropriate cases. Authorizations for such use of the symbol could be based on principles analogous to those applicable to the non-United Nations use of the United Nations emblem and the non-official (UN — WE BELIEVE) emblem, namely:

(*a*) The proposed activity for which permission to use the symbol is requested should be clearly supportive of the objectives of the Environment Programme, e.g. undertaken with the support (financial or other) of UNEP or at least in consultation or co-operation with UNEP (i.e., there should be an official or *de facto* link between the Programme or its objectives, on the one hand, and the outside activity, on the other);

(*b*) It should not be a purely or primarily commercial venture for private profit;

(*c*) Adequate assurances should be obtained that misuse of the symbol will be prevented.

6. Use of the symbol in such a way as to create the misleading impression that an outside activity (publication or other) is UNEP-supported or sponsored, if this is not in fact the case, should clearly not be permitted.

7. Each case will have to be considered on its merits. As in the case of non-United Nations use of the United Nations emblem, there may be borderline cases by no means easy to decide: where certain aspects of a proposed activity may be advantageous to UNEP from the publicity point of view (heightening of environment consciousness, etc.), but at the same time contain a commercial element. It will then have to be determined which element is predominant, i.e., whether the activity in question is essentially UNEP supportive and non-profit, or if it has too much of a commercial flavour.

8. In the light of the above consideration, the use of the symbol by the Umseltbundesamt would seem to be permissible.

9. By way of conclusion to be drawn from the foregoing, I believe that it would be desirable, since — as stated in the beginning of this letter — there is as yet no established policy or procedure for dealing with cases involving non-UNEP use of the symbol, for UNEP and the Office of Legal Affairs to try to formulate such a policy. As already indicated, there is no directly applicable United Nations resolution or other decision regulating the use of the symbol and, consequently, the Secretary-General has full discretion in the matter. However, such discretion should be exercised in a consistent manner, on the basis of recognized principles, bearing in mind those developed for the application of General Assembly resolution 92 (I) (see above) and the particular facts and issues involved in each case.

10. If you believe that there is a danger of misuse of the symbol, such as to warrant the taking of additional measures for its protection, the matter could be brought to the attention of the UNEP Governing Council with a view to its adopting a resolution or decision on the lines of that adopted by the General Assembly with respect to the United Nations emblem (resolution 92 (I)). Such legislative action would no doubt strengthen the Executive Director's hand when trying to restrain improper use of the symbol. This is, of course, a policy decision to be taken by the UNEP secretariat in light of its assessment of the facts. If you would consider such a step, I could then try to send you (as a drafting aid) copies of the preparatory documentation relating to the adoption by the General Assembly of resolution 92 (I). However, unless your assessment indicates that there is a clear and perceived danger of misuse of the symbol, it may be preferable to continue to deal informally with problems as they arise, judging each case on its merits in the light of the principles and considerations set out above.

11. An alternative course might be to submit draft guidelines for the use of the symbol to the Governing Council for its approval. Such guidelines could perhaps be similar to those which were agreed upon for the use of the IWY symbol. The purpose then would be not primarily to restrain improper use, although that could be a desirable by-product, but rather to encourage outside use, including commercial use (e.g., for environmentally sound products or production methods). As in the case of the International Women's Year symbol, arrangements could be made with a representative non-governmental organization or group of NGOs in establishing a procedure for application of the agreed guidelines.

12. There are several choices open (in the absence of a resolution placing restrictions on the use of the symbol, such as 92 (I) which practically rules out commercial use of the United Nations emblem). It all depends for what purposes the UNEP secretariat intends the symbol to be used, primarily or exclusively.

30 May 1979

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12. CIRCUMSTANCES UNDER WHICH A STAFF MEMBER SHOULD BE CLASSIFIED AS STATELESS FOR UNITED NATIONS PURPOSES — LACK OF VALID PASSPORT DOES NOT NECESSARILY INDICATE STATELESSNESS — "*DE JURE*" AND NOT "*DE FACTO*" STATELESSNESS SHOULD BE CONSIDERED FOR UNITED NATIONS PURPOSES — THE CASE OF BLACK SOUTH AFRICANS UNDER SOUTH AFRICAN LAWS WITH PARTICULAR REFERENCE TO BANTU HOMELANDS AND INDEPENDENT HOMELANDS

Memorandum to the Executive Officer of the Offices of the Secretary-General

1. The question has arisen as to the validity of considering a black South African, selected candidate for a post in the Secretariat, who was born in South Africa but does not hold a passport, as stateless for recording purposes. This matter raises the general question of the circumstance when a staff member should be considered as stateless for recording or other United Nations purposes.

2. The Convention Relating to the Status of Stateless Persons of 28 September 1954 defines "stateless person" as "a person who is not considered as a national of any State under the operation of its laws."[6] This definition was later accepted by the drafters of other international instruments such as the Convention on the Reduction of Statelessness of 30 August 1961 (A/CONF.9/15, 1961) as properly reflecting the definition of *de jure* stateless persons. It is important to note that most of the rules as to nationality are the sole concern of municipal law and that it is the prerogative of each State to determine according to its laws what classes of persons shall be entitled to its nationality. A valid passport is, for most countries, conclusive evidence of nationality. However, the fact that a person does not hold a passport may indicate that protection and assistance are not provided to him by any State but it cannot be considered in itself as evidence of statelessness.

3. The need to find a solution for the category of persons who are stateless "*de facto*", was raised during the debates which led to the conclusion of the conventions dealing with the question of statelessness. Stateless persons *de facto*, according to a study on statelessness prepared in 1949 by the Department of Economic and Social Affairs are persons "who, having left the country of which they were nationals, no longer enjoy the protection and assistance of their national authorities, either because these authorities refuse to grant them assistance and protection or because they themselves renounce the assistance and protection of the countries of which they are nationals". In other words, *de facto* stateless persons have a juridical nationality which is as concerns any advantage to the individual only a nominal and ineffective nationality. The drafters of the conventions dealing with the question of statelessness limit the scope of these conventions to the solution of problems relating

[6] United Nations, *Treaty Series*, vol. 360, p. 130.

to *de jure* stateless persons mainly because of the difficulty to provide an objective criteria for the definition of *de facto* stateless persons (see *Yearbook of the International Law Commission*, 1954, vol. 1, pp. 18-45, 171-176, 196-197). However, the United Nations Conference on the Elimination or Reduction of Future Statelessness adopted, in August 1961, a resolution recommending that "persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality" (Final Act of the Conference, A/CONF.9/14 (1961)).

4. It seems that the purpose of the above-mentioned resolution is to encourage States to provide an effective legal nationality to persons who are stateless *de facto*. This the United Nations Secretariat is not in a position to do; it can consider only whether a person is legally a national of any given State. Thus, it would seem inappropriate for the Secretariat to characterize for United Nations recording purposes a candidate for United Nations appointment or a staff member as stateless when that person has the nationality of a State according to the laws of that State.

5. It may also be observed that various resolutions of the General Assembly on the geographical distribution of the staff provide that clear preference is to be given to the recruitment of nationals of Member States and does not require that such recruits enjoy the favour of the government in power at the time. The system of desirable ranges of posts for each Member State leaves no allocation, no "quota" of posts for persons who are not nationals of Member States. As a matter of policy it would be inadvisable to increase the number of staff classified as "stateless" by including in that category "de facto" stateless persons.

6. Thus, in order to determine when a certain staff member should be considered as stateless for United Nations administrative purposes it is essential to know whether he is a national of any State either under the local laws of the State where he was born or any other State with which he has substantial ties. Accordingly, in the case of a staff member who was born in South Africa and has not acquired the nationality of any other State the question is whether under the operation of the South African laws he is a South African national.

7. Under the laws of South Africa it appears that every black person in South Africa remains a South African national while at the same time being a citizen of one of the pre-independent "bantu homelands". The legal situation is different with respect to the citizens of those "homelands" (Transkei and Bophuthatswana) which became independent under the national laws of South Africa. The citizens of these "independent homelands" ceased to have South African nationality (see W. H. B. Dean, "A citizen of Transkei", *Comparative and International Law Journal of Southern Africa (1978)*, p. 57; W. H. Oliver, "Bophuthatswana nationality", *South Africa Yearbook of International Law* (1977, p. 108)).

8. It appears therefore that if a person born in South Africa has the citizenship of one of the "independent homelands" he ceased to have the nationality of South Africa. As those "homelands" have never been recognized as sovereign States or subjects of international law, it follows that such "nationality" does not constitute nationality under international law and a person thus deprived of South African nationality would properly be considered stateless. (Of course South African legislation rendering persons previously holding South African nationality "stateless" would violate principles in article 15 of the Universal Declaration of Human Rights as well as in articles 8 and 9 of the Convention on the Reduction of Statelessness — to which, however, South Africa is not party.)

9. On the other hand, in the absence of any indication of withdrawal of South African nationality, it would be correct to consider a black South African to be a South African national for United Nations purposes notwithstanding that he lacked a passport and was deprived of protection and assistance granted to other nationals by the present South African régime.

30 May 1979

13. Law regulating marital status for United Nations administrative purposes

Memorandum to the Acting Chief of the Allowances and Benefits Unit, Office of Personnel Services

1. In your memorandum of 24 August 1979 you requested our advice on whether the attached documents submitted by Mr. A. could be accepted by your Office as proof of his divorce and remarriage.

2. It is United Nations policy to determine the marital status for United Nations administrative purposes by reference to the law of the home country of the staff member concerned. While countries vary as to their recognition of foreign divorce decrees, none will recognize a foreign divorce decree which is not recognized as valid in the place where the divorce was rendered. In this case, we must accordingly first ascertain whether Mr. A's divorce and remarriage, which took place in Egypt, are legally effective in Egypt. We have reviewed the documents submitted and in our opinion they do not evidence a valid divorce or valid remarriage recognized in Egypt itself.

3. Though it is true that under Islamic law a marriage can be dissolved by the husband through a unilateral declaration of his desire to do so, under current Egyptian law — in particular the statute of 4 January 1955, which regulates the functions of the *Ma'zoon* or Matrimonial Notary Public — such a declaration has no effect unless it is made before the *Ma'zoon* (Matrimonial Notary Public) and embodied in an official document drawn by him. The documents which Mr. A. has submitted have not been drawn up by or certified by a *Ma'zoon*.

4. Even if Mr. A. had followed this procedure before the *Ma'zoon*, he, as a Ghanaian national, would not have obtained a valid Egyptian divorce because under article 13, paragraph 2 of the Egyptian civil code,

> "... divorce and separation are governed by the law of the country to which the husband belongs at the time of the commencement of the legal proceedings".

Since Mr. A. is of Ghanaian nationality, an Egyptian Matrimonial Notary Public could not effectively certify his divorce. In order to obtain an Egyptian divorce, Mr. A. would have to initiate divorce proceedings in an Egyptian Court where an Egyptian Judge would presumably apply Ghanaian law.

5. On the basis of the documents presented by Mr. A. therefore, there is no adequate basis to recognize a change in his marital status for United Nations administrative purposes.

10 September 1979

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14. Question of applicable law in work relations between the United Nations and its staff — Inapplicability of national laws — Applicability of United Nations Staff Regulations and Rules — Distinction between fixed-term appointments and appointments for indefinite periods — Extension of fixed-term appointments to permit exhaustion of sick leave entitlements already accrued

Letter to the Legal Liaison Officer at the United Nations Environment Programme Headquarters

1. I am writing you in answer to your inquiry about the letter from a French lawyer about a former UNEP staff member who was separated after three years of service in the Paris/UNEP office on successive fixed-term appointments.

2. The Convention on Privileges and Immunities of course applies to preclude any legal action in French court, but the staff member's lawyer does not suggest an intention to bring suit; he is rather inquiring about applicable law. On that the Charter (to which France is party) specifies in

Article 101 that the staff shall be appointed by the Secretary-General "under regulations by the General Assembly". Consequently, it is only the United Nations Staff Regulations and Rules which apply to United Nations staff, regardless of where they are actually appointed or assigned. Actually this is so well established so far as the United Nations is concerned that we have not had occasion in recent years to deal with the question directly. You may be interested in a case now pending in the United States Circuit Court of Appeals involving former staff members of the Organization of American States, who, not being satisfied with the OAS Administrative Tribunal's awards of compensation to them, brought suit in the United States District Court for the District of Columbia. The suit was dismissed and the appeal is now pending in the Circuit Court of Appeals to which the United Nations has submitted an *amicus* brief.

3. The staff member has not appealed, and I would suggest that her lawyer be advised of the exclusive application of the United Nations Staff Regulations and Rules and the benefits, e.g. annual leave, pension withdrawal, sick leave, etc., actually paid to the staff member on separation, as well as of the resource available to her under chapter XI and under the Statute of the Tribunal.

4. The staff member's lawyer refers to the French rule (which is followed under the general labour law principles in many countries but not for civil service) that a fixed-term employment contract is deemed to be for an indefinite period after several renewals. This is not the rule under United Nations Staff Regulations and Rules, which specifically maintain the distinction between fixed-term appointments and appointments for indefinite periods (annex III). (Proposals to provide for termination indemnities upon the expiry of fixed-term appointments have been made but rejected by the General Assembly). While the United Nations Administrative Tribunal's jurisprudence recognizes the possibility of a holder of a fixed-term appointment acquiring a legitimate expectancy of renewal, no such expectancy arises simply by virtue of renewals.

5. You have asked for guidance on the question (not actually raised in the correspondence) of health as a factor in non-renewal. Sickness or ill health does not preclude the non-renewal of an appointment after expiry date; none the less it is established United Nations practice for fixed-term appointments to be extended to permit the exhaustion of sick leave entitlements already accrued if the staff member is on sick leave at the time of expiry of the original appointment. In the present case, the contract seems to have been extended until the sick leave was exhausted. No further entitlement existed — even if she were deemed to be unable to work — except to the extent that an entitlement may have arisen under appendix D or the Pension Regulations. In the absence of a service-incurred illness or pensionable disability, I do not see any basis for further payments or benefits after expiry of the fixed-term contract.

12 February 1979

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15. QUESTION REGARDING THE REFUSAL OF SEVERAL OPERATIONAL ASSISTANCE (OPAS) EXPERTS TO FOLLOW INSTRUCTIONS OF THE SECRETARY-GENERAL — OPAS EXPERTS ARE SUBJECT TO INSTRUCTIONS OF THE SECRETARY-GENERAL, INCLUDING ON SECURITY MATTERS — CONSEQUENCES OF REFUSAL TO FOLLOW SUCH INSTRUCTIONS

Memorandum to the Director of the Office of General Services

1. I refer to your memorandum of 21 June 1979 regarding several Operational Assistance (OPAS) experts who have refused to follow the instruction of the Secretary-General concerning the evacuation of Uganda owing to the security situation in that State. In view of the special status of OPAS experts the present case raises the following questions:

(*a*) Whether OPAS experts are subject to the instructions of the Secretary-General and in particular to those which relate to declared security situations;

(*b*) Whether OPAS experts should be submitted to the same disciplinary measures that may face experts who have the status of staff members should they not follow the order of the Secretary-General to evacuate a country in case of crises;

(*c*) What action would be appropriate and consistent both with the obligations of the Organization under its agreement with the Government and with its contract with the expert.

2. Analysis of these questions in the light of the OPAS arrangements between the United Nations, the Government and the expert (which is set forth in the attached memorandum of law), has led to the following conclusions:

(*a*) OPAS experts must serve the cause and interests of the United Nations and observe international standards of conduct. Accordingly, these experts must follow the instructions given by the Secretary-General in all these matters;

(*b*) In time of crisis or security situation the Secretary-General has the full discretion whether in the United Nations interest directly, or the interests of the personnel to determine that all United Nations personnel including OPAS experts must evacuate a certain state or area. The refusal of these experts to follow such instructions is incompatible with their international status and constitutes a breach of their contract.

(*c*) In view of the fact that there is no direct employment relationship between the United Nations and OPAS experts they are not subject to the United Nations disciplinary procedures or measures;

(*d*) The refusal of OPAS experts to follow the instructions of the Secretary-General concerning evacuation constitutes sufficient ground for the termination of their contract;

(*e*) The termination of OPAS experts' contract based on the misconduct of the expert or on the non-observance by him of his obligations to the United Nations would not run counter to the obligations of the Organization vis-à-vis the Government and would also be in conformity with the applicable administrative practices of the Organization and thus with the expert's rights under his United Nations contract.

ANNEX

Memorandum of Law

1. The case of OPAS experts who have refused to follow the instructions of the Secretary-General concerning the evacuation of Uganda owing to the security situation in that State raises the following questions:

(*a*) Whether OPAS experts are subject to the instructions of the Secretary-General and in particular to those which relate to declared security situations;

(*b*) Whether OPAS experts should be submitted to the same disciplinary measures that may face experts who have the status of staff members should they not follow the order of the Secretary-General to evacuate a country in case of crises;

(*c*) What action would be appropriate and consistent both with the obligations of the Organization under its agreement with the Government and with its contract with the expert.

2. OPAS experts are recruited by the United Nations for the Government concerned. The officers enter the service of the requesting Government, perform functions as national civil servants or other comparable Government employees and are under the exclusive direction of the Government with regard to the performance of their duties. As regards salaries and emoluments, OPAS officers received from the Government an amount equivalent to the salary of national officers of comparable rank, supplemented by an additional stipend and allowances to be paid by the Organization, so that they receive in total approximately the same remuneration as international civil servants of equivalent category.

3. The legal status of OPAS experts is governed by the following documents:

(*a*) The OPAS Standard Agreement concerning the relationship between the Organization and the Government (or in many cases — the UNDP Standard Basic Assistance Agreement, which has superseded the OPAS Standard Agreements);

(*b*) The contract between the United Nations and the expert;

(*c*) The relationship contract or arrangements between the Government and the expert concerned.

The UNDP Standard Basic Assistance Agreement (which was signed in the case of Uganda on 29 April 1977 and superseded the OPAS Standard Agreement signed on 27 February 1967 and amended on 9 May 1972) stipulates: "Operational experts shall be solely responsible to, and be under the exclusive direction of, the Government... but shall not be required to perform any functions incompatible with their international status or with the purposes of the UNDP or of the executing agency..." (Art. III, para. 5). The Agreement lays down that OPAS experts will be entitled to the same privileges and immunities as officials of the United Nations (Art. IX, paras. 4 and 5). The Contract between the Organization and the Officer specifies the conditions under which the officer, as employee, agrees to place his services at the disposal of the Government as his employer and further defines the mutual relationship that shall exist in this connexion between the Organization and the officer. Thus the contract states that the officer shall be responsible to the Government and that in the performance of his duties "he shall neither seek nor accept instructions from any other Government or from any other authority external to the Government". But under the terms of the contract the officer is obliged to "conduct himself at all times with the fullest regard for the aims of the Organization and in a manner befitting his status under this contract". The contract also provides that the expert "shall not be engaged in any activity that is incompatible with the purposes of the Organization or the proper discharge of his duties with the Government".

4. Owing to the complexities of this dual status of OPAS experts, it is difficult to define with precision their relationship to the Government and to the United Nations. The agreements show clearly that these experts are subject to the authority of the Government with regard to the performance of their duties and therefore obliged to follow the instructions of the Government in that respect. But these agreements also recognize that OPAS experts have certain obligations in respect of the United Nations. Although these obligations are not always spelled out, they derive directly from the special international status granted to the experts under the OPAS arrangements. Thus the legal relationship between the United Nations and the experts should be determined in the light of their special status. Accordingly the obligation of these experts to serve the cause and interests of the United Nations and observe international standards of conduct clearly indicates that the Secretary-General as the chief administrative officer of the Organization has the exclusive authority to guide these experts in all matters related to the purposes and interests of the United Nations. Thus, in time of international crisis or internal security situations, the Secretary-General has the full discretion to determine that it is in the interests of the Organization that United Nations staff, including those who are entitled to the protection of the United Nations, will evacuate a certain area.

5. Furthermore, there is no question that the contractual link with the United Nations is an essential element determining the consent of a person who agrees to become an OPAS expert (see United Nations Administrative Tribunal Judgement No. 150 (Irani), para. VI). It seems that the expert's entitlement to special international status and to the same privileges and immunities as United Nations officials are major factors in this contractual link. It appears that these experts are under the protection of the United Nations in view of the fact that they have been charged with carrying out or helping to carry out some of the Organization's functions. (For general discussion on the protection entitled by United Nations agents see the Advisory Opinion of the International Court of Justice in the Reparation for Injuries Suffered in the Service of the United Nations, *I. C. J. Reports*, 1949, p. 174.) The United Nations will not be in a position to assume its responsibilities with regard to the protection of these experts without their full co-operation. Moreover, it appears that this protection is not optional for the expert: the special status as well as the privileges and immunities are granted to OPAS experts in the interests of the United Nations and not for the personal benefit of the individuals themselves (see also section 19 of the Convention on Privileges and Immunities of the United Nations) and therefore these experts are not in a position unilaterally to waive that protection. In other words, the protection of OPAS experts can be guaranteed only with their full co-operation, which in view of their special international status is not optional but obligatory. Furthermore, OPAS experts are not entitled to increase the envisaged financial risks incumbent on the Organization in case of their death or injury. The conclusion is therefore that the refusal of OPAS experts to follow the instructions of the Secretary-General concerning evacuation is incompatible with their international status and thus constitutes a breach of their contract with the Organization.

6. The fact that there is no direct employment relationship between the United Nations and OPAS experts clearly indicates that these experts are not subject to the disciplinary system of the Organization. Moreover, since OPAS experts do not have the legal status of officials or staff members, they are not subject to the Staff Regulations and Rules and thus the disciplinary measures defined in Rule 110.3 of the Staff Rules are not applicable in their case.

7. It would therefore appear that the only effective measure which the Organization may take in a case of serious breach of requisite conduct by an OPAS expert, is the termination of his contract. But this raises two preliminary questions: first, whether the unilateral termination of the contract by the United Nations would be in conformity with the provisions of its agreement with the Government and second whether the termination of the

contract under such circumstances would be in conformity with the administrative practices which the OPAS expert may be entitled to invoke.

8. As to the Government, the services of OPAS experts are defined by the provisions of Article II of the UNDP Standard Basic Assistance Agreement as a form of assistance; and therefore, Article XI of this Agreement which provides for unilateral suspension or termination of assistance after notice to the Government is *prima facie* applicable also to the termination of the services of OPAS experts. But in view of the fact that the OPAS arrangements are governed also by other agreements and that according to article XI the UNDP may terminate its assistance only after a period of suspension, a procedure which does not seem to be practical in the case of OPAS experts, it would appear that the terms of Article XI could not literally be applied in this case. Nonetheless, as the Government is a party to the OPAS arrangements and its consent is a pre-condition for the placement of the expert in the country, it would seem incumbent on the Organization to notify the Government of the intention to terminate the expert's United Nations contract if possible.

9. As regards the OPAS expert's rights, article IV of the expert's contract with the Organization provides *inter alia* that the contract is concluded for one year, that it may be terminated by either party upon one month of written notice and that should the Organization so terminate the contract, it should pay to the officer an indemnity equal to one week's salary of each month of uncompleted service under the contract. The contract stipulates that no indemnity shall be due if its termination is based on the misconduct of the officer or on the non-observance by him of the obligations incumbent upon him. The Administrative Tribunal in the case of Mirza (United Nations Administrative Tribunal Judgement No. 149) regarded as an essential requirement of due process that "a fixed-term appointment may be terminated before the expiry of the term for cause, but not arbitrarily by giving a month's notice". The Tribunal then proceeded to examine the grounds on which an OPAS contract could be prematurely terminated. The Tribunal referred to article VII, paragraph 3 of the contract and concluded: "Since the administrative practices of the Organization are based on the staff rules, the Tribunal holds that the staff rules relating to termination are relevant to the determination of the case", and consequently found that "in the absence of a specific provision in the contract regarding premature termination, the relevant provisions of ICAO Field Service Staff Rules are applicable to the present case even though the Applicant does not have the status of staff member".

10. Unlike that case, the present cases involve a situation which falls within a specific contract provision for termination prior to expiry, and the express reference in article IV to non-observance of obligations makes it unnecessary to seek analogy in the Staff Rules. Apart from the substantive basis for termination, it is also to be noted, as regards procedure, that Joint Disciplinary Committee submissions are not mandatory even for staff members if serving away from established duty stations, and hence there can be no question of necessary application to OPAS experts by analogy. Accordingly the termination of the experts in this situation would not violate any contract rights expressed or implied.

11. In the light of the foregoing, our conclusions may be summarized as follows:

(*a*) OPAS experts must serve the cause and interests of the United Nations and observe international standards of conduct. Accordingly, these experts must follow the instructions given by the Secretary-General in all these matters;

(*b*) In time of crisis or security situation the Secretary-General has the full discretion whether in the United Nations interest directly or the interests of the personnel to determine that all United Nations personnel including OPAS experts must evacuate a certain State or area. The refusal of these experts to follow such instructions is incompatible with their international status and constitutes a breach of their contract;

(*c*) In view of the fact that there is no direct employment relationship between the United Nations and OPAS experts they are not subject to the United Nations disciplinary procedures or measures;

(*d*) The refusal of OPAS experts to follow the instructions of the Secretary-General concerning evacuation constitutes sufficient ground for the termination of their contract;

(*e*) The termination of OPAS expert's contract based on the misconduct of the expert or on the non-observance by him of his obligations to the United Nations would not run counter to the obligations of the Organization vis-à-vis the Government and would also be in conformity with the applicable administrative practices of the Organization and thus with the expert's rights under his United Nations contract.

5 September 1979

16. QUESTION CONCERNING THE LEGAL STATUS OF UNITED NATIONS CONSULTANTS—SPECIAL SERVICE AGREEMENTS REGULATE RIGHTS AND OBLIGATIONS OF CONSULTANTS, NOT UNITED NATIONS STAFF RULES — LACK OF A RIGHT TO COMPENSATION FOR LOSS OF PERSONAL EFFECTS — DIFFERENCE IN NATURE BETWEEN COMPENSATION FOR LOSS OF PERSONAL EFFECTS AND COMPENSATION FOR DEATH, INJURY OR ILLNESS

Memorandum to the Under-Secretary-General for Administration, Finance and Management

1. Please refer to your memorandum of 22 October 1979 addressed to the Legal Counsel in which you requested advice regarding a claim for compensation by the above-named consultant in connexion with the loss of personal effects which occurred while he was retained on a special service agreement by the United Nations. Since there is no indication that the loss might have been occasioned by negligence on the part of the United Nations we have treated the matter as one of contractual obligation and not tort liability for purposes of this memorandum. For the reasons set forth in the following paragraphs, I wish to advise you that in our opinion the United Nations has no legal liability to pay such compensation under existing terms of contract to consultants on special service agreements. In our view, compensation for loss of personal effects is not one of those social security benefits like compensation for death, injury or illness which should be provided routinely as a matter of moral obligation.

2. The special service agreement of 9 October 1978 between the United Nations and Mr. Martin-Bates sets forth the respective rights and obligations of the parties. The second sentence of paragraph 4 provides that

> "the subscriber shall be considered as having the legal status of an Expert on Mission for the purposes of the Convention on the Privileges and Immunities of the United Nations. The subscriber shall not be considered in any respect as being a staff member of the United Nations".

Since a subscriber is not a staff member, and since one must be a staff member to avail oneself of the Staff Regulations and Rules, it follows that a subscriber cannot avail himself of the regulations and rules.

3. Mr. Martin-Bates' rights are limited to those which are set forth in the agreement under paragraph 5 as follows:

> "The rights and obligations of the subscriber are strictly limited to the terms and conditions of this agreement. Accordingly, the subscriber shall not be entitled to any benefit, payment, subsidy, compensation or entitlement, except as expressly provided in this agreement. In the event of death, injury or illness attributable to the performance of services on behalf of the United Nations under the terms of this agreement, the subscriber shall be entitled to compensation equivalent to the compensation which would be payable under Appendix D to the Staff Rules to a staff member of the United Nations of a similar rank, but not higher than the rank of Director."

The only "compensation" to which a consultant may be entitled is that provided in the event of death, injury or illness and all other "compensation" is precluded.

4. Paragraphs 4 and 5, taken together, eliminate any possibility that the staff rules or the administrative instruction on compensation in the event of loss of or damage to personal effects could apply to a consultant as a matter of right. It is, of course, possible to include the gist of a given staff rule or administrative instruction as a provision of the agreement in much the same way as the Appendix D provisions have been assimilated in the third sentence of paragraph 5. But, in the absence of such assimilation, no legal right in a subscriber arises under the staff rules and administrative instruction. I therefore have no hesitancy in stating that the special service agreement does not create a legal liability on the part of the United Nations to compensate Mr. Martin-Bates for loss of his personal effects.

5. Whether there is a moral obligation such as to make payment desirable in the interest of the Organization is not for this office to determine under the Financial Rules, but I would point out that

compensation for loss of personal effects is distinguishable from compensation for death, injury or illness. The latter is provided on the theory that such compensation represents a social security benefit which should be made available by all employers even to consultants because of the seriousness of the risk involved, not only to the consultant himself, but to dependants, who may be deprived of support. Compensation for loss of personal effects is a different matter because the risk involved does not appear to be so serious as to require that all employers should provide the benefit as a matter of social policy. As an independent contractor, a consultant accepts a number of limited risks and loss of personal effects is one of them.

6. There may be cases when the Organization increases the consultant's risk of loss through its own actions or omissions. If, for example, the Organization failed to take appropriate measures to safeguard a consultant's effects, or the Organization retained a consultant on a long-term basis instead of providing him with an appointment which carries Appendix D coverage, it could be argued that the Organization had wrongfully increased the consultant's risk, whether actual or potential. In this case, however, there is no indication that the Organization had increased the consultant's risk in any way before the loss. There is a suggestion that the consultant was disadvantaged after the loss because he was misinformed as to his rights to recover, but such disadvantage cannot be chargeable to the Organization since the consultant's rights in this regard were clearly set forth in the special service agreement.

7. As we have mentioned earlier, the decision as to moral obligation and the interest of the Organization is not for this Office. We have stated our views only for the purpose of elucidating the issues involved. If it is decided that an *ex-gratia* payment should be made, it would be entirely appropriate for the Claims Board to assess the loss and to recommend the amount of compensation.

26 November 1979

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17. QUESTION CONCERNING TERMINATION OF PERMANENT APPOINTMENTS ON THE BASIS OF ABOLITION OF POSTS — CONDITIONS TO BE MET AND PROCEDURES TO BE FOLLOWED UNDER THE STAFF REGULATIONS — CONSIDERATION OF AFFECTED STAFF MEMBERS TO BE RETAINED IN PREFERENCE TO THOSE ON ALL OTHER TYPES OF APPOINTMENTS — QUESTION WHETHER AFFECTED STAFF MEMBERS SHOULD BE CONSIDERED FOR LOWER-LEVEL POSTS — QUESTION WHETHER IN CASES OF ABOLITION OF POSTS AGREED TERMINATION MAY BE OFFERED TO AFFECTED STAFF MEMBERS

Memorandum to the Chief of Staff Services, Office of Personnel Services

1. I understand that approximately 10 locally-recruited General Service staff members on permanent appointments in Geneva and one locally-recruited General Service staff member on a permanent appointment in New York face termination of their appointments because the units in which they work have, or are to be, transferred to Vienna. You have requested my advice on whether the staff members concerned may be terminated on the basis of abolition of posts and reduction of staff under United Nations staff regulation 9.1 (*a*); whether it would be possible to terminate the staff members under the agreed termination provision contained in the final paragraph of United Nations staff regulation 9.1 (*a*); and whether other staff members on appointments other than permanent or regular appointments would have to be "bumped" to make posts available for the staff members on permanent contracts whose appointments are subject to termination.

2. For the reasons set out below, it is my view that the staff members concerned are subject to termination on the basis of abolition of post pursuant to staff regulation 9.1 (*a*) *provided* that *all* the requirements set out in staff rule 109.1 (*c*) are met; that, depending on the fact situation in each particular case, it may be legally open to the Administration to offer agreed terminations to some staff members under the final paragraph of staff regulation 9.1 (*a*) with the consequent possibility of

receiving higher termination indemnity under staff regulation 9.3 (*b*); and that staff members to be terminated under staff regulations 9.1 (*a*) on the basis of abolition of post must be found unsuitable for both vacant positions and positions currently occupied by other staff members who have appointments other than regular or permanent appointments, although if the Administration chose not to "bump" other staff members a colourable (although probably unsuccessful) argument could be made that staff rule 109.1 (*c*) (i) did not mandate "bumping" in the event of an appeal by the redundant staff member.

Abolition of post

3. The jurisprudence of the United Nations Administrative Tribunal makes it clear that the elimination of General Service posts in Geneva and New York, upon the transfer to Vienna of the substantive units which they service, constitutes an abolition of posts for the purposes of staff regulation 9.1 (*a*) as the number of posts in New York and Geneva respectively is reduced even though the total number of posts including those in Vienna remains the same since equivalent posts have been established in Vienna. This is a consequence of the locally recruited General Service status of the staff involved.

Exercise of the Administration's right to terminate permanent staff members on the basis of abolition of post

4. The propriety of the Administration terminating the appointment of a staff member who holds a permanent appointment is dependent upon strictly following the procedure set out in staff rule 109.1 (*c*). The United Nations Administrative Tribunal has consistently held that the validity of a termination under this provision depends on clearly demonstrating that the staff member concerned could not be retained in accordance with staff rule 109.1 (*c*). The Tribunal has held that the Administration must demonstrate that the staff member concerned was in fact *fairly and objectively* considered for available posts and was *fairly and objectively* found not suitable for any of them. The Tribunal has pointed out that this burden is not discharged by a simple assertion that the staff member was not suitable but this fact must be clearly demonstrated and proved e.g. by a contemporaneous memorandum which sets out the details of the qualifications required for all available posts and explains in each case why the particular staff member to be terminated is not suitable for each of those posts.

The obligation to "bump" other United Nations staff members

5. United Nations staff rule 109.1 (*c*) provides, *inter alia*, that

> "if the necessities of the service require abolition of a post or reduction of the staff, and subject to the availability of suitable posts in which their services can be effectively utilized, staff members with permanent or regular appointments shall be retained in preference to those on all other types of appointments..."

6. The ILO Administrative Tribunal has held that the Administration must consider staff members on permanent appointments who are to be terminated for posts currently occupied by other staff members on lesser appointments. I think that this conclusion is justified although if the Administration did not choose to "bump" other staff members it would be possible to argue that the phrase "subject to the *availability* of suitable posts" means that the posts must be *available* in the sense of being vacant or about to become vacant (e.g. by retirement or by the expiration of fixed term contracts). However, this construction would probably not be accepted by the United Nations Administration Tribunal which would in all likelihood adopt the approach of the ILO Tribunal which more clearly appears to reflect the intention of the staff rule. I understand, in view of the particular grade level and qualifications of the posts in question (at least in Geneva) that this problem may ultimately not be significant in the present situation.

7. A potentially more serious problem is *dicta* of the ILO Administrative Tribunal that if a staff member to be terminated is willing to accept a post at a lower level he must be considered for such posts. If this becomes a concrete problem I will consider the matter in more detail but I am of

the preliminary opinion that valid arguments based, *inter alia*, on the necessities of efficient administration might in some cases be cited in opposition to that requirement.

Agreed termination

8. If each staff member refrains from contesting the termination and accepts the regular termination indemnity there would be no difficulty whether finally the termination is grounded on abolition of post, under the first paragraph of staff regulation 9.1 (*a*), or in the interests of good administration, the staff member not contesting, under the last paragraph of staff regulation 9.1 (*a*). The question remains whether it would be possible to offer the higher indemnities which are discretionary under staff regulation 9.3 (*b*) for "agreed" termination but which could not be paid upon termination grounded on abolition of post.

9. In my view it would be improper so to act in all the cases because the text and, in particular, the legislative history of the final paragraph of staff regulation 9.1 (*a*) indicate that the uncontested-termination provisions should apply only in cases where none of the grounds specified in the first paragraph of staff regulation 9.1 (*a*) is clearly available. I think that it would be justifiable to invoke the agreed termination procedure and the discretion to pay higher indemnities in exceptional cases where it is difficult for the Administration to demonstrate that the staff member could *not* have been retained in service in another post. If on the other hand there are, in fact, only a limited number of possible alternative posts at the particular grade and none could reasonably be considered suitable and if, further, no recruitment for comparable posts is anticipated at the same duty station, then it would be proper to rely on the ground of abolition of post rather than to invoke the last paragraph of staff regulation 9.1 (*a*) together with staff regulation 9.3 (*b*) as a justification for higher termination payments.

14 December 1979

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18. CLAIMS FOR COMPENSATION UNDER ARTICLES 5 AND 6 OF APPENDIX D OF THE STAFF RULES — QUESTION REGARDING THEIR APPLICABILITY IN CASE OF THE EXISTENCE OF "NO FAULT" LAWS IN THE LOCAL FORUM — SUMS RECOVERED THROUGH APPLICATION OF "NO FAULT" LAWS OR THROUGH A COMMON LAW NEGLIGENCE CLAIM TO BE TAKEN INTO ACCOUNT BY THE SECRETARY-GENERAL WHEN AWARDING COMPENSATION UNDER APPENDIX D — SALARY PAYMENTS DUE TO SICK LEAVE ENTITLEMENTS DO NOT CONSTITUTE COMPENSATION UNDER APPENDIX D

Memorandum to the Secretary of the Advisory Board on Compensation Claims

1. I refer to your memorandum dated 18 June 1979 attaching a claim for compensation form submitted by Miss F.R. The memorandum requests a legal opinion on the applicability of article 6 of Appendix D of the Staff Rules.

The facts

2. The claim form indicates that on 5 February 1979 Miss R. was run down by a truck at the corner of First Avenue and 58th Street on her way home from work in the main library. She has claimed "credit de congé de maladie nécessité par accident" and has advised that her medical bills have been sent to her attorney who is handling a "no fault insurance" claim on her behalf.

3. You subsequently orally informed my office that Miss R. has not yet returned to work and will probably be absent on sick leave for many more months. You also indicated that the Advisory Board on Compensation Claims would not necessarily confine itself to the relief requested by the claimant and consequently might grant her compensation if, for example, she is permanently incapacitated.

Liability of third party: New York Comprehensive Automobile Insurance Reparations Act

4. The claim form attached to your memorandum indicates that the claimant has forwarded all medical bills to her attorney in connexion with a claim under New York's "no fault" insurance law (the Comprehensive Automobile Insurance Reparations Act).

5. This Act would oblige the insurer to pay the medical expenses that were caused by the accident: section 671.1 (*a*). Miss R. could also recover for any loss of earnings that resulted from the accident. However, if an injured person receives voluntary or contractual benefits, such as sick pay from an employer, which is equal to the injured employee's earnings, then no recovery for loss of earnings from work is permitted: section 671.1 (*c*). Miss R. would appear to be within this provision as she is currently on sick leave. However, if she is disabled and exhausts her sick leave she will be able to recover for any loss in earnings that subsequently results up to $1,000 per month for not more than three years less a 20 per cent deductible: sections 671.1 and 671.2. There is an over-all limit of $50,000 per person on benefits: section 671.1.

6. The first difficulty is that article 6 of appendix D operates when there is a "legal liability in a third person to pay damages" for the injury for which the United Nations pays compensation. The New York legislation does not provide for payment of damages. Instead, it provides for the payment of "first party benefits" to eligible persons for loss arising out of the operation of a motor vehicle in the State of New York. Since these benefits are payable irrespective of fault it is difficult to characterize them as damages. It follows that should Miss R. obtain benefits under the New York legislation article 5 would be the applicable provision rather than article 6.[7]

7. In a recent decision the United States sought to recover medical expenses that it had paid for an employee injured in a New York motor accident.[8] The United States relied on a statutory provision similar in form to article 6 of appendix D.[9] The Court held that it was not necessary to resolve the uncertainties between this statute and the "no fault" law since the United States could recover under the terms of the defendant's no fault policy issued pursuant to the provisions of the "no fault" law because the New York "no fault legislation enabled recovery of medical expenses not only by the injured person but by any person who had suffered loss on account of the personal injury arising out of the use or operation of a motor vehicle in New York".[10] Whether a particular policy could exclude such payments was not considered by the Court.

8. Although this decision would appear to enable the employer to recover for medical expenses the question of other payments such as disability annuities is much less clear since the terms of the legislation dealing with loss of earnings etc. imply that only payments to the injured person are envisaged by the Act.

9. If Miss R. has a common law action then these problems relating to recovery do not apply.[11]

10. I suggest, therefore, that at this stage you simply draw Miss R.'s attention to the provisions of both articles 5 and 6 and request her to keep you informed of the progress of her case against the driver of the truck and his insurers. You should inform her that if she in fact receives compensation under the New York "no fault" statute prior to the settlement of her claim against the United Nations such amounts may be taken into account in any award of compensation that the United Nations might make. You should also inform her that should she receive damages if her attorney proceeds with a common law negligence claim the amount of those damages will be taken into account by the Secretary-General when awarding compensation.

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[7] This distinction may be of great importance to Miss R. for article 5 gives the Secretary-General discretion whether to take into account any compensation payments under governmental, institutional or industrial schemes.

[8] United States *v.* Leonard (1978) 448 F. Supp. 99. (United States District Court, W.D., N.Y.).

[9] Federal Medical Care Recovery Act, 42 U.S.C. S2651.

[10] 448 F. Supp. 99 at 102.

[11] Miss R.'s injuries appear sufficiently serious to permit a common law negligence action (assuming the truck driver was negligent): s673 of the New York Comprehensive Automobile Insurance Reparations Act.

11. If it appears that the claim for compensation against the United Nations will be heard before Miss. R.'s claim against the truck driver and his insurers, the file should be returned to this office for advice on whether an assignment of her claim is required or whether any amounts ultimately received by Miss. R. from the insurers of the truck driver should merely be deducted, perhaps over a period of time, from compensation payable by the United Nations. At the present stage it would appear that the latter course is more likely since it would appear that any compensation would most probably take the form of annuities for total disability. However, until you can advise me of exactly what compensation payments are likely to be made by the United Nations and some idea of the amounts involved it is difficult to advise on the precise recovery procedure that should be used in this case.

12. This need for precise information is particularly relevant if Miss R.'s recovery rights are in fact under the New York "no fault" legislation which takes into account payments made to the injured person under an employment contract. The recovery rights of the United Nations may ultimately thus be more academic than real in respect of payments other than medical expenses.

13. Perhaps I should add that salary payments made to Miss R. pursuant to her sick leave entitlements are not really "compensation" within the meaning of appendix D because article 18 (*a*) provides that authorized absences occasioned by the injury or illness shall be charged to the sick leave of the staff member. The situation changes upon exhaustion of sick leave since in such cases article 18 (*a*) provides that the staff member shall be placed on special leave while article 11.1 (*b*) provides for the payment of compensation. Arguably, if the claimant subsequently returns to work and later, because of another injury or illness exhausts her remaining sick leave, the special leave credit which the Secretary-General may authorize could either be considered as "compensation" or could be considered as converting the initial grant of sick leave for the compensable injury into "compensation". However, since those payments would depend upon a subsequent use of sick leave not related to the compensable injury (if it were related then compensation is payable under article 11) it would follow that article 6 is not applicable since that subsequent injury or illness was not caused in circumstances creating a legal liability on the part of the third party who caused the first injury.

Payments made by Blue Cross

14. You orally requested for advice on the question of any hospital payments that might have been made pursuant to the United Nations Blue Cross group policy since those payments would be reflected in the rates charged to staff members in the future.

15. Any action that Blue Cross takes would, in the first instance, be a decision for that organization and its legal advisors. Accordingly, if you can ascertain whether Blue Cross has in fact made such payments under the United Nations Group Policy you may wish to inform the United Nations Insurance Unit and request them to advise Blue Cross that Miss R. has claimed compensation under the New York "no fault" law.

26 June 1979

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19. COMPENSATION IN THE EVENT OF ILLNESS, ACCIDENT OR DEATH ATTRIBUTABLE TO THE PERFORMANCE OF OFFICIAL DUTIES ON BEHALF OF THE UNITED NATIONS — PHILOSOPHY AND PURPOSE OF APPENDIX D OF THE STAFF RULES — DISCRETION OF THE SECRETARY-GENERAL TO REQUIRE CLAIMANTS OF COMPENSATION TO ASSIGN RIGHTS OF ACTION AGAINST THIRD PARTIES OR TO JOIN IN PROSECUTING SUCH ACTION — SUMS THUS RECOVERED FROM THIRD PARTIES AS FACTORS TO BE CONSIDERED IN ASSESSING PAYMENTS OF COMPENSATION

Memorandum to the Secretary of the Advisory Board on Compensation Claims (ABCC)

1. I refer to your memorandum dated 14 May 1979 requesting an opinion of the Office of Legal Affairs on the application of article 6 of appendix D of the Staff Rules. Since this case raises

recurring issues of general application in the administration of appendix D, I have taken this opportunity to prepare a detailed opinion which can be used as a point of reference for procedure in future compensation claims where third party liability exists.

Outline of facts

2. Dr. D. R., a locally-recruited UNICEF staff member, died on 20 December 1978 as a result of injuries sustained at Hyderabad on 17 December 1978 when an Air India airliner on which he was a passenger crashed during take-off. The staff member, on official travel, was on the return leg of a New Delhi-Hyderabad-New Delhi flight. Since the staff member's ticket was for a domestic (i.e. non-international) air travel the liability of Air India for the accident is governed by Indian Law.[12]

3. Your file reveals that the staff member's gross earnings at the time of death were 124,670 rupees per annum and that he is survived by four children, two of whom are dependants (hereafter referred to as the dependent children) within the meaning of the United Nations Staff Rules. As Dr. R.'s death resulted from an accident while travelling in connexion with his official duties, the dependent children appear eligible to receive compensation under appendix D of the Staff Rules.[13]

Philosophy and purpose of appendix D of the Staff Rules

4. Appendix D of the Staff Rules implements the Secretary-General's mandate to "establish a scheme of social security for the staff, including provisions for health protection, sick leave and maternity leave, and reasonable compensation in the event of illness, accident or death attributable to the performance of official duties on behalf of the United Nations".[14]

5. As appendix D implements a system of social security it follows that United Nations accident compensation payments will be influenced by the receipt or entitlement to other payments in respect of the accident in question. One of the principal sources of such payments or entitlements is damages payable by a party legally liable for the accident. Article 6 of appendix D of the Staff Rules seeks to deal with this problem.[15]

Liability of third party (Air India)

6. The liability of an Indian air carrier for the death of passengers during a domestic flight in India is governed by the Indian Carriage by Air Act 1972. This Act implements the 1929 Warsaw Convention and the Warsaw Convention as amended at The Hague, 1955, and applies the rules contained in these Conventions to domestic air carriage. These Conventions, in return for what amounts to strict liability of an air carrier for the consequences of accidents, severely limit the amount of compensation payable by the air carrier.[16]

7. The Indian Carriage by Air Act provides that the liability of an air carrier in the case of the death of a passenger is enforceable by the personal representative of the deceased and by members of the passenger's family who have sustained damage as a result of the passenger's death. The total amount of compensation recoverable under the Act in respect of the death of the passenger is divided between the claimants in such proportion as the Court thinks fit.

8. Air India has admitted liability under the Act for the death of Dr. R. and has advised that its liability is limited to 100,000 rupees together with additional minor amounts for loss of Dr. R.'s

[12] There is no evidence in your file to indicate that other third parties might also be liable, e.g. negligent air traffic controllers or manufacturers of defective equipment.

[13] Article 2 (*b*) (iii).

[14] Staff regulation 6.2. The rules are separately issued as appendix D to the Staff Rules in accordance with staff rule 106.4.

[15] Other sources of payments include United Nations pension entitlements (see article 4) and non-United Nations compensation entitlements (see article 5).

[16] There are certain circumstances when a carrier cannot avail itself of the limits of liability, e.g. wilful or reckless misconduct or failure to issue a passenger ticket. There is no evidence in your file to indicate that this case raises such issues.

baggage etc.[17] Whether this total amount will in fact be payable by Air India will, of course, depend upon whether the claimants can establish that amount of financial loss. Since Dr. R.'s annual salary was well over 100,000 rupees, I think that it is clear that the dependent children (as defined by the United Nations Staff Rules) alone have already suffered such a financial loss. However, the amount received by the two dependent children may be considerably less than the 100,000 rupees permitted by the Indian Act, since that total amount of compensation is divided between eligible claimants, including the estate of the deceased, in such proportion as the Court thinks fit. Doubtless, the Court would take into account when determining each claimant's share of compensation the fact that the United Nations was providing compensation to some of the eligible claimants under the Indian Act and that the United Nations was seeking to recover those payments from any compensation payable by Air India to those claimants. Accordingly, the extent of recovery by the United Nations depends upon the number of claimants who will share, and in what proportion, in the amount payable by Air India.[18]

Recovery procedures under Article 6 of Appendix D

9. The discretion given to the Secretary-General under article 6 relates only to the question as to whether the United Nations should require claimants to assign rights of action against third parties or to join in prosecuting such action. Usually, the Secretary-General will not require assignment of a claim against a third party[19] but will request the claimant (with United Nations assistance, if necessary) to make a claim against the third party and will permit the claimant to receive that compensation. The amount received will then be deducted, perhaps over a period of time, from the annuities payable to the claimant under article 10 of appendix D.[20] If a claim has been prosecuted to judgement or otherwise settled, with or without United Nations participation, the sums recovered have to be taken into account in assessing payments of compensation due to the claimant by the United Nations[21] or recovered by the United Nations if it has already made an award of compensation.[22]

10. Accordingly, I suggest that you draw the attention of the guardian of the dependent children to the provisions of article 6 of Appendix D and point out that any payments made by Air India to the children will be taken into account by the United Nations in determining the amount of compensation it will pay. In order to expedite the hearing of the children's claim he should be requested also to provide full details of the state of the children's claim against Air India together with details of any payments (if any) received to date. A copy of my letter to Air India could also be given to him. You might also inform the guardian that it is the usual policy of the United Nations, provided that the settlement is approved by the United Nations, to permit claimants to receive payments of damages from third parties with repayment to the United Nations being effected, interest free, over a period of time from the annuities payable to the claimants by the United Nations. However, if the guardian does not pursue the claim against Air India any award of United Nations compensation may be conditional upon assignment to the United Nations of the children's right of action against Air India.

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[17] See their letter dated 27 March 1979 in your file. This amount seems broadly in line with the limits on liability laid down in the Conventions which the Act implements. Those limits are, however, expressed in terms of French francs with a stated gold content. Section 6 of the Act provides that conversion to rupees is made at the date on which the amount of damages to be paid by the Carrier is ascertained by the Court (presumably the date of judgement or the date the Court approves a settlement).

[18] There is no information on this point in your file. I have written to Air India for details. However, they may require consent of the dependent children's guardian before supplying me with any information.

[19] Such an assignment was required in the case of *Waldron-Ramsey* in 1969 (*ABCC* No. 1714).

[20] Whether the Secretary-General should exercise his discretion to "spread out" deductions over a period of time depends, of course, on the particular circumstances of each case. However, this discretion will normally be exercised in those air crash deaths, such as the present case, where the entitlement of the survivors is confined to the limited amounts prescribed by the Warsaw Convention (see para. 6 above). See, for example, the case of *Beslon* in 1968 (*ABCC* No. 1660).

[21] See, for example, the case of *Beslon*, note 9 above.

[22] See, for example, the case of *Chang* in 1972 (*ABCC* No. 1895).

11. In the meantime, in view of UNICEF's understandable desire that this case be handled expeditiously, the merits of the case could be considered by the ABCC. In the event that the guardian advises that he does not intend to take action against Air India the award could be made conditional upon assignment to the United Nations of the children's right of action against Air India. The file could then be returned to this Office for advice as to the extent to which the United Nations should pursue the claim against Air India.

12. However, I think it is more likely that the guardian will pursue the children's claim in which case, after this Office has approved the settlement, the question of repayment to the United Nations can be handled administratively by your Office. Alternately, if settlement has already been effected recovery would be again an administrative matter.

31 May 1979

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20. PRACTICE OF THE SECRETARIAT IN CASES WHERE AN AGREEMENT SUBMITTED FOR REGISTRATION MAKES REFERENCE TO AN AGREEMENT WHICH HAS NOT YET BEEN REGISTERED UNDER ARTICLE 102 OF THE CHARTER — INTERPRETATION OF PARAGRAPH 2 OF THAT ARTICLE — QUESTION WHETHER REFERENCE TO AN UNREGISTERED AGREEMENT DOES NOT CONSTITUTE "INVOCATION" OF THAT AGREEMENT BEFORE AN ORGAN OF THE UNITED NATIONS (THE SECRETARIAT), WHICH WOULD PRECLUDE REGISTRATION OF THE NEW AGREEMENT — POSSIBLE CASES AND COURSES OF ACTION BY THE SECRETARIAT

Internal memorandum

A. *The problem*

1. The material recently submitted by the Government of Egypt with a view to the registration of the Treaty of Peace between Egypt and Israel of 25 March 1979 makes reference to the Agreement between Egypt and Israel initialled on 1 September 1975. In particular, article I (2) (*a*) of the appendix to annex I provides as follows:

> "... until Israeli armed forces complete withdrawal from the current J and M Lines established by the Egyptian-Israeli Agreement of September 1975, hereinafter referred to as the 1975 Agreement, up to the interim withdrawal line, all military arrangements existing under that Agreement will remain in effect, except those military arrangements otherwise provided for in this Appendix".

2. Neither the September 1975 Agreement nor the Agreement of 18 January 1974 between Egypt and Israel concerning disengagement of forces, to which it refers, was registered with the Secretariat under Article 102, as it should have been as soon as possible after its entry into force.

3. Among the questions raised by such cases, which occur not infrequently, is whether reference to an unregistered agreement does not constitute "invocation" of that agreement before an organ of the United Nations (the Secretariat), which would be contrary to Article 102, paragraph 2, of the Charter and would preclude registration of the new agreement by the Secretariat.

B. *Interpretation of Article 2, paragraph 2, of the Charter*

4. The *travaux préparatoires* to Article 102 of the Charter shed no light on this question, although it is clear that what the authors of the Charter had mostly in mind was the invoking of an agreement before the International Court of Justice (see volume 13 of the Documents of the San Francisco Conference on International Organization: Registration and publication of treaties).

C. *Practice of the Secretariat*

5. Where the 1979 Treaty of Peace between Egypt and Israel is concerned, the Secretary-General, in his reply to the Egyptian note verbale of 25 April 1979, suggested that the Government of Egypt should register the 1974 and 1975 Agreements.

6. This suggestion is in conformity with standing practice in such cases. References to earlier agreements in an agreement submitted for registration can be divided into three categories:

(*a*) Reference to international agreements which are subject to the provisions of Article 102 of the Charter and are evidently still in force, but knowledge of which is not necessary for the application of the agreement submitted for registration;

(*b*) References to international agreements which are subject to the provisions of Article 102 of the Charter and a knowledge of which is necessary for the application of the new agreement, whether or not they are still in force; and

(*c*) References to international agreements which are subject to the provisions of Article 102 of the Charter but which are superseded in their entirety by the agreement submitted for registration.

In case (*a*), the attention of the registering authority is drawn to Article 102 of the Charter and to the provisions of the General Assembly regulations, and it is suggested that the registering authority, if it is a party of the old agreement, should register (or file and record) the latter agreement.

In case (*b*), the Secretariat holds the new agreement in abeyance and suggests that the registering authority should take the necessary steps to register the earlier agreements. (Quite often the new agreement, while stating that it entirely supersedes the earlier agreement, nevertheless refers back to its provisions, knowledge of which is therefore necessary for the application of the new agreement. In such a case, the Secretariat will suggest that the old agreement should be registered; for neither Article 102 nor the related General Assembly regulations expressly precluded the registration of abrogated agreements, and even if an agreement is abrogated it may still have created residual legal situations that can lead to its being invoked before an organ of the United Nations.)

Lastly, in case (*c*), the Secretariat normally refrains from drawing attention to the fact that the old agreement was not registered.

7. There are dozens — indeed hundreds — of examples of this Secretariat practice. In most cases, Governments and organizations responded favourably to our suggestion that the agreements in question should be registered. In a minority of cases, we received no reply; when that happened, the new agreement remained in abeyance. There never seems to have been a case in which any Government or intergovernmental organization contested our position on this point.

8. It must be pointed out that the Secretariat is bound to refrain from publishing for information in the *Treaty Series*, without prior registration, any international agreement that is subject to the provisions of Article 102 of the Charter. The reason for this is that, unlike registration, publication "for information" in the *Treaty Series* is an act of the Secretariat and not an act of the parties (see *Repertory of Practice of United Nations Organs*, vol. V, Article 102, para. 85); consequently, the Secretariat could not, on pain of becoming a party to a violation of Article 102 of the Charter, publish in the *Treaty Series* without the safeguards provided by the registration procedure (certification of authenticity, declaration of the absence of reservations, etc.) an international agreement recognized as such by the parties, even if the registering authority requested it to do so. (If, however, the authority submitting the new agreement for registration declares that the instrument referred to in that agreement is not an international agreement within the meaning of Article 102 of the Charter, the Secretariat, having received that assurance, may decide to publish the document for information along with the agreement that is being registered; the important point is for the Secretariat not to take any initiative that can be regarded as contravening Article 102 of the Charter.)

D. *Conclusions*

9. As has been mentioned, the practice of the Secretariat described above has never been formally contested. On the other hand, it must be borne in mind that this practice, although rational, is not expressly provided for in the Charter or in the regulations. Moreover, it is possible that an organ of the United Nations other than the Secretariat may have already taken a position (perhaps implicitly) by allowing an unregistered agreement to be invoked before it. This is precisely what

occurred in the case of the Agreement between Egypt and Israel of 18 January 1974; that Agreement, which the United Nations signed as a witness and in the application of which it took an active part, has already been reproduced as a Security Council document; obviously, therefore, the Secretariat would hardly be in a position to refuse registration of the new Agreement on the ground that the 1974 Agreement had not been registered. Lastly, it can simply be argued that refusing to register and publish an agreement for the sole reason that it refers to an agreement which has not itself been registered would be directly contrary to the purpose sought by Article 102 of the Charter.

10. In view of the foregoing, I should be obliged if you would confirm to me that you agree with the following conclusions:

(1) *In the case of the Treaty of Peace between Egypt and Israel of 25 March 1979*

If Egypt replies in the negative to our suggestion that the Egyptian-Israeli Agreements of 1974 and 1975 should be registered, we shall take note of that decision and shall nevertheless proceed to the registration of the 1979 Treaty of Peace on behalf of Egypt, provided that the other conditions are fulfilled. In the *Treaty Series*, as an exceptional measure, foot-note references to the Security Council documents reproducing the 1974 and 1975 Agreements will be inserted wherever those Agreements are mentioned in the Treaty of Peace, but we shall not publish those Agreements for information in the *Treaty Series*.

(2) *As a general rule*

(i) Where an international agreement submitted for registration refers to another international agreement which has not itself been registered, the Secretariat will continue, in accordance with existing practice, to bring this to the attention of the registering authority and, where appropriate, will defer registration pending a reply.

(ii) If the registering authority indicates that it does not intend to register the old agreement, the Secretariat will take note of this and proceed to register the agreement originally transmitted.

(iii) The Secretariat will not publish for information in the *Treaty Series*, without its having first been subjected to the registration procedure, any agreement which appears to the Secretariat to be subject to the provisions of Article 102 of the Charter, unless the registering authority responsible for registration confirms to it that it does not consider the agreement in question to be subject to the provisions of Article 102.

4 May 1979

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

1. UNIVERSAL POSTAL UNION

RESPONSIBILITY OF POSTAL ADMINISTRATIONS IN CASE OF DAMAGE CAUSED TO THE EXTERIOR PACKAGING OF A POSTAL PARCEL (PARCELS, AGREEMENT, ART. 39)

An Administration requested the opinion of the International Bureau on a question in connexion with the extent of the responsibility of Postal Administrations with respect to postal parcels. More precisely, it wished to know whether Administrations were responsible for the damage caused to the exterior packaging of a parcel, in this instance a unit case, if the contents were not damaged. The International Bureau replied as follows:

1. The problem raised by your Administration relates both to the packaging of postal parcels and to the extent of the responsibility of Administrations, as conditioned, in the case under consideration, by application of the regulations relating to packaging.

2. The general conditions relating to packaging are contained in article 104 of the operating regulations of the Postal Parcels Agreement. The specific instance of suitcases is not provided for, and no reference to any such case has been found in the records of the International Bureau (Acts of Congress, EC, CCPS, inquiries, etc.). The said article 104 can thus give rise to more or less restrictive interpretations with respect to suitcases as packaging. Indeed, paragraphs 1 and 2 provide that:

> "All parcels must be packaged and sealed in a manner appropriate to the weight, shape and nature of the contents as well as the means of transport and the length of the journey"

and that:

> "Parcels should be made particularly sturdy if they are:
>
> (*a*) To be transported over long distances;
>
> (*b*) To be trans-shipped a number of times or handled on a number of occasions."

In our view, a suitcase fulfils all of these conditions and may be used as a container, that is, as packaging. On the other hand, if an empty suitcase (without any contents) is consigned to the post as a parcel, it should be packaged, since it does not benefit from the derogation provided for in article 104, paragraph 5 (*b*), in particular because it is not normal commercial practice to send an empty suitcase (new suitcase) from one country to another without packaging. However, in the case under consideration the suitcase had been used as a container (packaging) and should be treated as such under the postal regulations.

3. It remains to be determined whether, in case of damage, responsibility extends not only to the contents but also to the container. There again, UPU regulations contain no specific provision. The very fact that certain parcels are accepted without packaging means that the extent of responsibility in this respect is not precisely delineated. However, by going back to the source of article 39, paragraph 3, of the Postal Parcels Agreement, according to which "the indemnity is calculated according to the current prices, converted into gold francs, of goods of the same kind . . . ", one can see that that provision was adopted with the specification that "it is generally possible to determine the current price of the goods which constitute a parcel" (Acts of the Congress of Madrid, 1920, vol. II, p. 498).

In this regard, it should also be recalled that the question of responsibility for damage arising from delays in the sending and delivery of postal parcels has been discussed on many occasions by Congress and that each Congress had stated the moral obligation of Postal Administrations if delay results in the complete or partial deterioration of the contents of the parcel (see, for example, Acts of the Congress of Stockholm, 1924, vol. II, p. 816).

It therefore seems to us that it was the intent of the legislator that the indemnity should be calculated on the basis of the market value of the contents of the parcels. In other words an Administration is responsible only for the contents of a parcel and not for damage to its packaging.

4. To sum up, with respect to the responsibility of Postal Administrations in case of damage to postal parcels, the Postal Parcels Agreement contains no provision specifying that such responsibility extends not only to the contents of the parcels but also to the container (packaging). Nevertheless, it would appear, as indicated in paragraph 3 above, that at the time of the adoption of the provisions of article 39, paragraph 3, and the consideration of questions relating to the indemnity to be paid, the intent of Congress was to establish the responsibility of Administrations solely for the contents of parcels and not for their packaging.

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2. WORLD HEALTH ORGANIZATION

AMENDMENT TO RULES OF PROCEDURE OF THE ASSEMBLY REQUIRING TWO-THIRDS MAJORITY FOR NEW CATEGORY OF DECISIONS IN ADDITION TO THOSE FOR WHICH WHO CONSTITUTION REQUIRES SUCH MAJORITY — QUESTION OF CONSTITUTIONALITY OF THE AMENDMENT

Statement made by the Director of the Legal Division at the 12th Plenary Meeting of the Thirty-second World Health Assembly on 22 May 1979[23]

Mr. President, the delegate of Bahrain has raised the problem as to whether the draft amendment to rule 72 contained in the report before you is constitutional, and he has indicated that in his view it is not possible, through an amendment to the rules of procedure, to alter a provision of the Constitution, in this case article 60 of the Constitution which stipulates that decisions of the Health Assembly on important questions shall be made by a two-thirds majority. In other words is the amendment to rule 72 of the rules of procedure compatible with the provisions of article 60 of the Constitution? If I have understood the question correctly, this is the problem that the delegate of Bahrain has asked me to solve.

Before replying to this question I should like to point out that, as one delegation mentioned in committee, the legal adviser only gives opinions and that it is up to the Assembly to make a definite decision, in full knowledge of the facts, on the problem before it. Having said that, I shall try as clearly as possible to give some background information which the Assembly may wish to consider.

In order to interpret a text it is necessary, according to the rules laid down by the Vienna Convention on the Law of Treaties, to consider a certain number of aspects, in particular the ordinary meaning of the provision in question, the preparatory work, and the practice subsequently followed in applying the text. If the Assembly agrees, I should like to go over these various aspects in chronological order.

The first aspect of interpretation is the preparatory work. The people who drew up the Constitution of the World Health Organization had Articles 18 and 19 of the United Nations Charter in mind when they drafted article 60. The Technical Preparatory Committee examined the proposals made to it, which had initially recommended a qualified majority vote only in the cases specified in the Constitution itself. It was initially intended, therefore, that there would be only a certain restricted number of listed cases in which a vote could be taken by qualified majority, that is by two-thirds majority. However, the International Health Conference which followed the Technical Preparatory Committee unanimously approved a suggestion to include the present text of article 60 in the Constitution.

This text, which constitutes the second aspect of interpretation, consists of two different parts. First of all paragraph (*a*) of this article states that "Decisions of the Health Assembly on important questions shall be made by a two-thirds majority . . . These questions shall include: . . . " and three cases in which the two-thirds majority is required by the Constitution are given. Paragraph (*b*) of article 60 stipulates that decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting. This is the present text of the Constitution which you can find in *Basic Documents*.

The third aspect of interpretation of the text consists of the precedents. The first precedent for the application of article 60 (*b*), which provides for the introduction of additional categories of questions to be decided by a two-thirds majority, is the adoption by the First World Health Assembly of the present rule 73 of the rules of procedure, which established the Assembly's right to demand a qualified majority through a simple provision in the rules. The second precedent can be found in the amendment made in 1958 to the present rule 72 of the rules of procedure, which added to the categories of questions to be decided by a two-thirds majority as laid down in article 60 (*a*) of the Constitution, a new category concerning decisions on the amount of the effective working budget;

[23] Document WHA32/1979/REC/2, Verbatim Record of 12th Plenary Meeting.

this category was added following resolution WHA11.36 adopted by the World Health Assembly on 12 June 1958 at its seventh plenary meeting. This resolution is contained in *Official Records* No. 87, page 33. It may be remembered that this amendment was the subject of lengthy debate during which constitutional objections were raised, particularly by the delegate of Iraq. Following these discussions the amendment was adopted in committee and in plenary session, with six dissenting votes in committee and eight dissenting votes in plenary. Those are the two precedents established by the Health Assembly itself. I could of course give details of the practice of other organizations if I were asked to do so, but I shall simply point out that these provisions are contained in the United Nations Charter and in the rules of procedure of the General Assembly.

That is the information I am able to supply to the Assembly so that it can make a sovereign decision on the validity of the constitutional objection that has been raised; it should of course be pointed out that, if the procedure is not recognized as constitutional by the Assembly, this would affect rules 72 and 73 of the rules of procedure and the resolution adopted in 1958, the constitutional character of which could be called into question.

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

[No decision or advisory opinion from international tribunals on questions relating to the United Nations and related intergovernmental organizations to be reported for 1979.]

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Canada

FEDERAL COURT

UNITED NATIONS AND FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS *v.* ATLANTIC SEAWAYS CORPORATION AND UNIMARINE S.A.: DECISION OF 25 MARCH 1979

Jurisdictional clause in a bill of lading providing for the exclusive applicability of Canadian law and the determination of disputes in Canada by the Federal Court of Canada — Question whether the jurisdiction in pursuance of the Federal Court in respect of a cargo claim extends to a cause of action arising outside Canada

The case concerned a claim for the expense of replacing a cargo of wheat which had been shipped for carriage from a port in the United States to a port in the Yemen Arab Republic and had been found upon arrival "affected by infestation and sprouting to the point of germination". The Trial Division had dismissed the action for damages on the ground that the Court was without jurisdiction to entertain the claim.

On appeal, the Federal Court noted that all the parties were located outside Canada and that the contract of carriage was alleged to have been made in the United States. It however observed that the bill of lading stipulated that the contract evidenced by the bill of lading be governed by Canadian law and that the disputes be determined in the Federal Court of Canada to the exclusion of any other courts.

The Court allowed the appeal on the following grounds:

> "The jurisdiction of the Court *ratione materiae* in an action *in personam* in respect of a claim for damage to cargo extends to a cause of action arising outside Canada. The terms of the *Federal Court Act* which confer jurisdiction *in personam* in respect of cargo claims contain no qualification, express or implied, based on the place where the cause of action arises. Significantly, this fact is quite unlike cases of jurisdiction *in personam* in *collision*. Once it is determined that a particular claim is one which falls within one of the categories of jurisdiction specified in section 22 (2) of the *Federal Court Act* the claim must be deemed to be one recognized by Canadian maritime law and one to which that law applies, in so far as the requirement in *Quebec North Shore Paper* and *McNamara Construction* cases is concerned. There is no other workable approach to the admiralty jurisdiction of the Court. To make jurisdiction depend upon the law that will govern by operation of the conflict of laws would create completely unpredictable and hazardous jurisdictional dichotomies."

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2. Israel

DISTRICT COURT OF HAIFA

THE GOVERNMENT OF ISRAEL AGAINST PAPA COLI BEN DISTA SAAR:
JUDGEMENT OF 10 MAY 1979

Question of the jurisdiction of an Israeli court regarding a member of a national contingent within UNIFIL, accused of smuggling explosives into Israeli territory — Claim of immunity from territorial jurisdiction — Question whether the accused could be considered as a member of a foreign military force present in Israel with the consent and permission of the State — Extent of the immunity of jurisdiction of members of such forces in the absence of a specific agreement on the matter between the host State and the country of the military forces origin — Question whether the accused could be considered as enjoying immunity from jurisdiction as a member of a United Nations force

The defendant was an under-officer in the Senegalese battalion within the framework of the United Nations Interim Force in Lebanon (UNIFIL). He was accused of having planned and implemented the transfer of explosives into the territory of the State of Israel for the purpose of delivering them to a representative of the Palestine Liberation Organization in that territory.

The defense attorney claimed immunity and produced as grounds for his claim two letters signed by the Chief Coordinator of United Nations Forces in the Middle East in which it was stated that Israel's refusal to hand over the accused to UNIFIL was contradiction with the "widely and consistently accepted principle of exemption from foreign criminal jurisdiction of military members of United Nations peace-keeping missions".

The Court noted that according to a note of the Legal Adviser to the Israeli Foreign Ministry Israel was not a party "to any international agreement whatsoever which grants immunity to UN soldiers who are not UN officials serving in UN forces in this area, including UNIFIL forces", and that the accused did not "belong to the category of persons enjoying diplomatic immunity in Israel".

With respect to the claim that since the defendant was a soldier in the Senegalese army stationed with permission in Israeli territory, he preserved the right of immunity against local jurisdiction, the Court stated the following:

> "This claim is based on an age-old rule set by Judge Marshall in the United States in the case of the ship 'The Exchange' at the beginning of the 19th century, and which became accepted over the course of time through court decisions in various enlightened nations. This rule states that 'a sovereign relinquishes part of his right of territorial jurisdiction when he permits a foreign ruler's military battalions to pass through the territory under his control' (this and other quotes to follow are taken from Archibald King's article which appeared on the *American Journal of International Law*, vol. 36, 1942). The background from the writing of this article, as the learned writer indicates, was that American military forces were stationed all over the world during World War II. At that time it was a common phenomenon that soldiers from one country would be within the territory of other countries and the question of crimes committed on the friendly nation's sovereign territory would arise. And since a ship is also part of a military division the incident of 'The Exchange' was brought up, whereby the ship was captured by Napoleon's armies in 1811, as proof of the judgement prevailing over military divisions stopping over on foreign territory, from which the author draws the conclusion that 'any military division, whether on land or sea, which enters the territory of another nation (with permission) enjoys extraterritorial status'.
>
> "The example of the case of extraterritoriality was not accepted by the King's Council of England when in 1939, the matter of *Chung Chi Cheung* v. *the King* was brought before it. But the presiding Judge Atkin accepted the rule set down by 'The Exchange' incident regarding immunity for foreign military forces stopping off on or passing through foreign territory. Likewise did the learned defense attorney bring to our attention a Canadian legal ruling of 1943

regarding the immunity of American soldiers who were staying on Canadian soil, in which two of the five presiding judges expressed opinions approximating those which the defense attorney is asking us to adopt.

"This claim on the part of the accused's attorney is rejected for various reasons. The first reason, directing itself to the matter at hand, is that the defendant is not part of a military force present on the soil of the State of Israel with the consent and permission of the State. The defendant's military division is encamped on Lebanese territory just as all UNIFIL divisions are stationed on Lebanese territory and not on Israeli territory. In addition, the stationing of these divisions on Lebanese territory was not implemented at the request of the State of Israel, but rather at the request of the Lebanese Government as can be learned from UN Security Council resolution number 425 of March 19th, 1978, by which the Security Council resolved 'in light of the Lebanese Government's request to establish the UNIFIL forces in Southern Lebanon for the purposes of ensuring the pullback of Israeli forces, restoring international peace and security and assisting the Lebanese Government in ensuring the restoration of its effective authority over the area'....

"Even if there was relevance to the law which the defense attorney brings out, the defendant was not within the framework of a soldier serving in a military battalion present on the territory of the State of Israel by her (the State's) invitation or permission, being that the defendant's division, as stated, is stationed on Lebanese territory by right of a Security Council resolution passed upon request of the Government of Lebanon.

"Regarding the defendant's visits into Israeli territory for the purpose of tending to the supply needs of the battalion to which he belongs — although we suppose that these visits were carried out with permission, they may not be construed as a visit of a 'foreign military division' made as per the invitation or consent of the host country. These visits fall more into the category of personal visits, regarding which we must conclude that the State of Israel agreed that the supply needs of the defendant's division would come from Israeli territory. And as Judge Marshall stated in the above-mentioned article by King, on page 541, there is no supposition regarding the entrance of foreign troops into the soil of a friendly country but rather must be expressly stated.

"In addition to this, the rule set down in the matter of 'The Exchange' was never universally in effect, but rather subject to specific legislation or the agreement among various nations, for the purpose of granting immunity to members of military divisions stationed on foreign soil. In this way was an agreement reached between England and France regarding the authority of military courts to try English soldiers who were stationed on French soil during the First World War. Similar agreements were reached between France and Serbia, France and Italy, France and Portugal and France and Siam during World War I. When American troops landed on French soil in 1917, there was necessity of exchanging letters between the American Secretary of State for Foreign Affairs and the French Ambassador in Washington D.C. in order to grant judicial authority to American military courts over American soldiers in France.

"And regarding American troops stationed in English soil during World War I, after long drawn out negotiations between England and the United States over judicial authority, the British Government issued a defense regulation which granted *limited* judicial authority to American military courts, even though she never implemented her judicial authority in regard to American soldiers stationed on her soil.

"Also after the outbreak of World War II, the United States never attained from the British Government full immunity which is referred to in the case of 'The Exchange', regarding her soldiers stationed on English territory, and this is despite the fact that at the outset of the war it was England who was the party most highly interested in having American soldiers stationed on soil under her jurisdiction.

"When there was necessity to station American military divisions on Australian territory, the Australian Government issued a regulation by whose right American military courts would bear authority regarding disciplinary and internal administrative matters, while reserving for

herself the judicial authority to bring American military personnel to trial. At a later stage, in 1942, a law was passed which stated that, in the event of the arrest of an American military person in Australia who had broken Australian law, notification would be given to the American military authorities and, if requested, the individual would be transferred to them for trial by American military law.

"It will not come as a shock that, when the scholarly J. G. Starke sums up the legal situation in 1977 in his book, *An Introduction to International Law*, he begins the paragraph which discusses our case as follows:

'armed forces admitted on foreign territory enjoy a limited, but not an absolute immunity from the territorial jurisdiction.'

"The scope of such immunity is dependent, according to Starke, upon the circumstances under which those military forces were permitted to tarry upon the soil of another sovereign State, especially upon the existence of or lack of specifically expressed agreements between the host country and the country of the military forces' origin in which there are arrangements regarding the conditions of entry of military forces into the foreign country's territory. The author's opinion is that where there are no such existing agreements, it is incumbent upon the host country to accept the accepted rules of international law (by virtue of her hosting foreign troops) — rules which have their source in the case of 'The Exchange'. From here, the learned author's opinion is that immunity is granted specifically and expressly by the host country, and that conditions of such immunity are determined in an agreement between the host country and the country of the military forces' origin; and that when a nation agrees to host a foreign army on her territory without the formation of an agreement setting down the terms of such immunity for the visiting army's soldiers, it is possible that the terms accepted by international law will be applicable. These terms grant exclusive authority to military officers regarding crimes committed in the area where the military division is stationed, or in disciplinary matters, and likewise in regard to crimes committed outside this area when the soldiers are actually performing their duties. The author goes on to state, on page 293:

'On the other hand, if the members of the force commit offences outside their area and while engaged in non-military duties, for example, recreation or pleasure, the territorial State may claim that they are subject to local law.'

"Let it also be recalled that in the Canadian Supreme Court, in confronting the problem before us, one of the Judges who espoused the acceptance of the law of immunity (Judge Tachereau) stated as follows (in D.L.R. of 1943):

"This immunity as I have said, applies to all forces, whether on duty or on leave, but not to members of the forces who may enter Canada as tourists or casual visitors.

'Moreover, the powers of arrest, search, entry or custody which may be exercised by Canadian authorities with respect to offences committed or believed to have been committed, are not interfered with.'

"It is superfluous to state that in the case before us, the defendant was not in the framework of his job during the time he allegedly perpetrated the transfer of explosives for the PLO; and that his entrance into Israel was an entrance with permission as is granted to every tourist or visitor.

"Finally let us introduce the words of Oppenheim in his book on international law, 8th printing, edited by Lauterpacht, 1967, pp. 848-49:

'However, the view which has the support of the bulk of practice is that in principle, members of visiting forces are subject to the criminal jurisdiction of local courts, and that any derogations from that principle require specific agreement of the local State or otherwise.'

"Our summary in regard to this point, consequently, is as follows: the rule claimed by the attorney for the defense is not applicable in regard to the matter before us due to the fact that the defendant was not a soldier in a military division stationed within the territory of the State of

Israel with the State's permission. This rule is not of universal relevance in international law — the customs of a country conceding judicial authority over crimes committed on her soil are dependent upon agreements between the host country and the visiting army's country of origin. Such that the defense attorney's claim is rejected."

With regard to the claim that the defendant had the right of immunity due to his being part of a United Nations force and would not, as a United Nations soldier, be sentenced by a court of the country in which he was stationed, in accordance with the rules of international law which had found expression in international pacts and in customary international law, the Court stated the following:

"Regarding this issue of conventional international law, the defense attorney relied upon the UN Charter and upon diplomatic correspondence exchange, which was the basis for stationing UN troops in various parts of the world such as Cyprus, the Congo, and in 1975 in Egypt after the separation of forces agreement between Israel and Egypt ...."

"The learned defense attorney also brought us quotes from Bowett's book, *United Nations Forces*, of 1964, from which it may be learned that if the old theory of extraterritoriality no longer holds, a new theory of functionality has taken its place. According to this theory, the justification for granting immunity and other rights to UN forces lies in the necessity to facilitate their effective functioning as a UN military force. The author goes on to say that these rights and immunity are not granted for the personal enjoyment of individuals but rather for the good of the organization; and there is nothing which grants UN forces freedom to escape the authority of local law.

"According to this opinion, which is espoused by the defense attorney, UN forces such as these do not fall into the category of a 'friendly army' but rather they must maintain neutrality, which they can do only if they are free of all pressure on the part of the country in which they are stationed.

"Since the State of Israel derives benefit from these troops being stationed in Southern Lebanon, he goes on to say, Israel must take an interest in preserving the independence of these forces.

"We wonder if, indeed, it may be pleaded in the name of an individual, accused of such crimes as those the defendant is accused of, that they are based on the preservation of neutrality which can serve as a basis for claiming immunity under any circumstances. But the law is not with the defense attorney, and not because of the grounds we raised here as a matter of incident, but rather because the relinquishment of the right to try falls into the framework of an act of kindness which the sovereign State may choose to perform in advance according to an agreement; or, *post facto*, after the commission of a crime he would be doing so of his own free will and not in accordance with practiced international law.

"In summarizing jurisdictional authority, Bowett concludes (page 437):

'It now seems to be accepted, despite occasional statements to the contrary, that visiting forces generally are subject to the exercise of concurrent criminal jurisdiction not only of the authorities of the forces to which they belong but also of the host State ...

'On the other hand, however, agreements concluded by the United Nations with Egypt, Lebanon, and the Congo provided that the members of the Force are subject to the exclusive criminal jurisdiction of the participating State.'

"We take it from here that this rule regarding immunity for UN forces is none other than part of international conventional law, to differentiate it from international customary law.

"Regarding our case, no agreement between the UN and government of Israel regarding immunity granted to members of the UN forces was brought to our attention. As a matter of fact, from the letter of the Legal Adviser to the Foreign Ministry presented to us and mentioned above, we learn that the State of Israel is not a party to "any agreement whatsoever which grants immunity to UN soldiers who are not UN officials serving in UN forces in this area, including UNIFIL forces." From here we learn that, according to the words of the scholarly author, there is no place for the plea of the defense attorney as being based on conventional international law.

"In regard to customary international law, only if there exists a specific agreement between the UN and the host country would the existence of this law be evidenced.

"In the words of the author, Ian Brownlie, in his book on international law, 1973:

'By analogy with the privileges and immunities accorded to diplomats, the requisite privileges and immunities in respect of the territorial jurisdiction of host states are provided for but in this context on the basis of treaty and not customary law. There is as yet no customary rule supporting international immunities.'

"In addition, the accepted view among the various authors is that members of military divisions serving in the Forces of the UN are not in the category of 'UN officials' and therefore are not eligible for the immunities granted UN officials by various agreements. Every immunity granted them is anchored in an agreement between the UN and the host country, as Bowett states in his book, quoted above, on page 131:

'The members of the Force who are at the same time members of the national contingents serving with UNEF in Egypt are not entitled to the privileges and immunities from jurisdiction contained in the Charter of the United Nations, since, although they are, for the purposes of the Regulations of the Force, "international personnel under the authority of the United Nations and subject to the instructions of the Commander through the chain of command," they are not agents or officials of the Organization.'

"Such that the defendant cannot cast his fate either on customary international law nor on conventional international law during the period of his services in the UNIFIL forces, and his claims based on international law are thus rejected. Even if the courts of the State of Israel were to consider customary international law as part of our country's judicial system, such acceptance would only abide if it were proven that this ruling of international law was passed by the majority of cultured nations of the world; if there 'does not exist a contradiction between the instructions of local law and international law. But where such a contradiction does exist, it is incumbent upon the court to give preference to the instructions of the local legislator and put it into effect'."

The Court then noted that one of the crimes allegedly committed by the defendant was the transgression of paragraph 99 of the 1977 Penal Law, a crime to be found in Section 7 of the law entitled "State Security, Foreign Relations, and Official Secrets" and further observed that under paragraph 5 of the above-mentioned law, Israeli courts were authorized to try persons for crimes committed abroad if such crimes "either harmed, or were intended to harm, the State of Israel, her security", etc. The Court concluded that in his broadening the bounds of the territorial jurisdiction of the Israeli courts to include acts committed abroad when those acts harmed the security of the State, the legislator could not have intended to grant immunity to persons who, even though the seal of the United Nations was upon them, were accused of crimes of this sort. It added that courts in the United States and Canada had taken the same path in their refusal to grant immunity, even though such immunity was as a rule accepted, when the matter under discussion was one of crimes against their security, and referred in this connexion to the case of a United Nations official from the Soviet Union who was accused of acts of subversion against the United States (*US* v. *Coplon*),[1] and to the ruling of a Canadian court in the case of *R.* v. *Rose*, under which

"... where acts committed by the diplomatic corps tend to put the safety of the State to which the corps is accredited in peril, then the immunity fails before that higher interest."

Finally, the Court, referring to the "United Nations Immunities and Privileges Ordinance enacted by the High Commissioner for Palestine on June 14th, 1947,[2] by which the High Commissioner (today the Foreign Minister) was authorized to confer immunities upon the United Nations or United Nations officials noted that the Foreign Minister had never made use of his authority in regard to this Order and that, although the Israeli sovereign State was aware of the

[1] District Court, Southern District, New York, 10 May 1949, 84F. Suppl. 472.

[2] See United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.13/10), p. 68.

necessity in granting immunity to United Nations bodies in certain instances, it chose not to utilize this authority regarding persons in the United Nations forces such as the defendant.

The Court concluded that, not being in accordance with customary or conventional international law, and not in accordance with Israeli law, the plea of immunity claimed in the name of the defendant should be rejected.

Part Four

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LEGAL BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

MAIN HEADINGS

A. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW IN GENERAL
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B. UNITED NATIONS
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C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS
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A. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW IN GENERAL
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МЕЖДУНАРОДНЫЕ ОРГАНИЗАЦИИ И МЕЖДУНАРОДНОЕ ПРАВО В ЦЕЛОМ
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Ответственность государств
Responsabilidad de los Estados

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State sovereignty
Souveraineté des Etats
Государственный суверенитет
Soberanía de los Estados

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C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS
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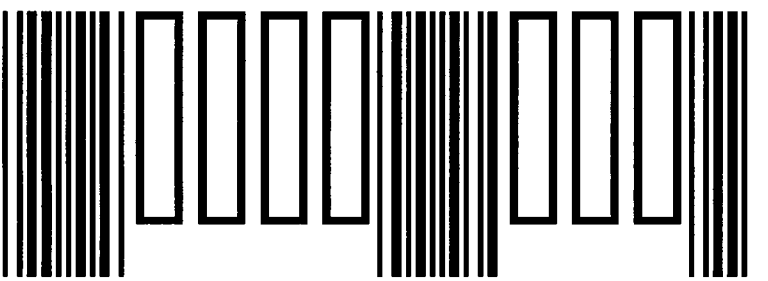

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